

Enforcement Actions: Significant Actions Resolved Individual Actions

Semiannual Progress Report
January - June 1997

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MASTER

**Office of Enforcement
U.S. Nuclear Regulatory Commission
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ABSTRACT

This compilation summarizes significant enforcement actions that have been resolved during the period (January - June 1997) and includes copies of Orders and Notices of Violation sent by the Nuclear Regulatory Commission to individuals with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC. The Commission believes this information may be useful to licensees in making employment decisions.

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ENFORCEMENT ACTIONS: SIGNIFICANT ACTIONS RESOLVED
INDIVIDUAL ACTIONS

January - June 1997

INTRODUCTION

This issue and Part of NUREG-0940 is being published to inform all Nuclear Regulatory Commission (NRC) licensees about significant enforcement actions taken against individuals for the first half of 1997. Enforcement actions are issued in accordance with the NRC's Enforcement Policy, published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions."

In promulgating the regulations concerning deliberate misconduct by unlicensed persons (55 FR 40664, August 15, 1991), the Commission directed that a list of all persons who are currently the subject of an order restricting their employment in licensed activities be made available with copies of the Orders. These enforcement actions will be included for each person as long as the actions remain effective. The Commission believes this information may be useful to licensees in making employment decisions.

The NRC publishes significant enforcement actions involving reactor and materials licensees as Parts II and III of NUREG-0940, respectively.

SUMMARIES

ORDERS

Shashi K. Agarwal, M.D., Orange, New Jersey
EA 96-152

An Order Suspending License (Effective Immediately) and Demand for Information was issued September 12, 1996. The action was based on inspections which concluded that Dr. Agarwal repeatedly failed to comply with numerous NRC requirements, provided inaccurate information to the NRC, and failed to cooperate with the NRC or appear for an enforcement conference scheduled to discuss numerous apparent violations identified at his facility. A Settlement Order Terminating License and Prohibiting Involvement in Licensed Activities was issued on January 6, 1997, in which Dr. Agarwal agreed not to be involved or exercise any control over licensed activities within the jurisdiction of the NRC for a period of five years from the date of the settlement agreement.

Nash Babcock

IA 95-058

An Order was issued December 1, 1995 prohibiting the individual and the companies (Five Star Products, Inc., Construction Products Research, Inc.) from providing products and services asserted to meet 10 CFR Part 50, Appendix B, or Part 21 requirements until certain provisions specified in the Order are satisfied. The Order was based on Mr. Babcock's and the above companies' refusal to permit NRC inspection of CPR's test facility and the provision of inaccurate and incomplete information to the NRC in violation of 10 CFR 50.5(a)(2). Following the issuance of the Order, the companies and the individual and the NRC staff entered a settlement agreement that essentially implemented the Order.

Paul A. Bauman

IA 94-020

An Order Requiring Notification to NRC Prior to Involvement in NRC-Licensed Activities (Effective Immediately) was issued August 26, 1994 to the above individual. The action was based on the failure to train and certify personnel, creation of false records, and providing false information to the NRC. The Order requires for a period of three years that the individual provide notice to the NRC of his acceptance of each employment offer in NRC-licensed activities.

Michael J. Berna

IA 94-032

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued November 15, 1994 to the above individual. The Order was based on inspection and investigation findings which concluded that the individual deliberately violated 10 CFR 30.10 by failing to perform field audits of radiographers, created false audit records, and requested others to create false records. The Order removes the

individual from NRC-licensed activities for a period of three years. In addition, the individual is to notify the NRC the first time that he engages in licensed activities following the prohibition period.

Jerome E. Bodian, M.D.

IA 94-023

A Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued September 8, 1994 to the above individual. The action was based on an inspection and investigation which concluded that the individual deliberately violated 10 CFR 35.53 by failing to measure the activity of radiopharmaceuticals prior to medical use and 10 CFR 30.10 by deliberately providing inaccurate information to the NRC. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years. In addition, the individual shall provide notice to NRC the first time following the prohibition that he engages in NRC-licensed activities.

Eugene Bolton

IA 96-009

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued February 23, 1996 to the above individual. The Order was based on an investigation which concluded that the above individual violated the fitness for duty requirements by submitting a surrogate urine sample and by admittedly submitting surrogate urine samples successfully on previous occasions. The Order prohibits the individual from seeking unescorted access to facilities licensed by the NRC for a period of five years from March 9, 1993, the date that the individual's unescorted access was terminated by the licensee.

John W. Boomer

IA 94-015

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued July 14, 1994 to the above individual. The Order was based on investigation findings which concluded that the individual deliberately violated 10 CFR 35.70(e) and 10 CFR 30.10 while he was President of Chesapeake Imaging Center, Chesapeake, West Virginia, by failing to conduct weekly surveys for removable contamination. The Order prohibits the individual from engaging in NRC-licensed activities for a period of three years. In addition, for that same period he shall provide a copy of the Order to any prospective employer engaged in NRC-licensed activities, provide notice to NRC the first time following the prohibition that he engages in NRC-licensed activities, and cease activities if he is currently involved in NRC-licensed activities.

Joseph R. Bynum

IA 96-101

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued January 13, 1997 to the above individual. The Order was based on an NRC investigation and testimony before the Department of Labor. The staff concluded that the individual deliberately violated Section 211 of the ERA and 10 CFR 50.5 (Deliberate Misconduct), causing the licensee to be in violation of 10 CFR 50.7 (Employee Protection). The issue emanated from the individual ordering

the forced resignation of a former corporate manager of Chemistry and Environmental Protection (CEP), based on the former CEP manager having engaged in protected activities. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years, and shall provide notice to the NRC the first time following the prohibition he engages in NRC-licensed activities.

Richard J. Gardecki IA 93-001

An Order Prohibiting Involvement in Certain NRC-Licensed Activities was issued May 4, 1993 to the above individual. The Order was based on the deliberate submittal of false information to former employers to obtain employment in licensed activities and to NRC investigators. The Order prohibits the individual, for a period of five years, from being named on an NRC license as a Radiation Safety Officer or supervising licensed activities for an NRC licensee or an Agreement State licensee while conducting activities within NRC jurisdiction. It also requires for the same period notice by copy of the Order to prospective employers engaged in licensed activities and notice to the NRC on acceptance of employment in licensed activities.

Juan Guzman IA 96-020

An Order Prohibiting Unescorted Access or Involvement in NRC-Licensed Activities (Effective Immediately) was issued April 19, 1996 to the above individual. The Order was based on an investigation which concluded that the individual falsified his background information to his employer, Baltimore Gas and Electric. The individual requested a hearing on April 29, 1996. A settlement order was signed October 4, 1996 and approved by the Licensing Board on October 16, 1996. The settlement stipulates that the individual agrees that from October 18, 1994, the date of his termination of unescorted access, until October 17, 1997, he is prohibited from seeking or obtaining unescorted access at any NRC-licensed facility and may not be involved in any NRC-licensed activities. Also for a period of two years following the prohibition, should he seek employment with any person who operations involve any NRC-licensed or regulated activity, he will provide a copy of the April 19, 1996 order and the agreement prior to employment.

Mark Jensen IA 96-042

An Order Prohibiting Involvement in NRC-Licensed Activities was issued July 16, 1996 to the above individual. The Order was based on a violation of 10 CFR 30.10, which caused his former employer to be in violation of NRC requirements by failing to utilize trained and qualified individuals for the conduct of radiographic operations. In addition, the individual attempted to generate a falsified training record for a radiographer. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years, and for a period of five years following the prohibition is required to notify the NRC when he engages in or exercises control over NRC-licensed activities.

An Order Prohibiting Involvement in NRC-Licensed Activities was issued May 15, 1997 to the above individual. The Order was based on an inspection and investigation which concluded that the individual, the President of Capital Engineering Services, deliberately violated the conditions of an order suspending CES's license by continuing to use moisture density gauges on numerous occasions. The Order removes the individual from licensed activities for a period of three years, requires the individual, for a period of three years to provide a copy of the order to any prospective employer who engages in NRC-licensed activities, and to notify the NRC the first time the individual is employed in NRC-licensed activities following the three-year prohibition.

William Kimbley
Ms. Joan Kimbley

IA 95-016
IA 95-015

A Confirmatory Order was issued June 12, 1995 based on an investigation which concluded that Midwest Testing, Inc., through its president, deliberately violated NRC requirements by: (1) allowing operators to use moisture density gauges without personnel monitoring devices, (2) not performing leak tests of two moisture density gauges, (3) not requesting a license amendment to name a new Radiation Protection Officer, (4) storing licensed material at an unauthorized location, and (5) allowing moisture density gauges to be used with an expired license. The investigation also concluded that the licensee's General Manager/Treasurer (the wife of the licensee's president) was involved in the deliberate violations noted in items (1), (2), and (5) above. The Order prohibits both the president and the General Manager/Treasurer, as well as Midwest Testing, Inc. and any successor entity, from applying to the NRC for a license and from engaging in, or controlling, any NRC-licensed activity for a period of five years.

Krishna Kumar

IA 97-011

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued February 18, 1997 to the above individual. The Order was based on an inspection and investigation which concluded that the individual, President of Power Inspection, Inc., engaged in deliberate misconduct by deliberately submitting to NRC licensees inaccurate information concerning: 1) eddy current qualification certification examination results and personnel certification summaries, and 2) the trustworthiness and reliability of two individuals, when Mr. Kumar knew that the individuals had used illegal substances. In addition, Mr. Kumar engaged in deliberate misconduct by directing Power Inspection employees to fabricate source utilization logs for radiography performed and by providing to the NRC a letter which contained inaccurate information relating to whether corrective actions had been taken in response to violations listed in a previous NOV. The Order prohibits Mr. Kumar from engaging in NRC-licensed activities for a period of ten years.

Larry S. Ladner

IA 94-019

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued August 26, 1994, to the above individual. The action was based on the individual's failure to supervise radiographer's assistants performing licensed activities, falsifying a large number of quarterly personnel audits and providing false information to NRC officials. The Order prohibits the individual from engaging in NRC-licensed activities for a period of three years and for a two year period after the prohibition has expired, requires him to provide notice to the NRC when he will be involved in NRC-licensed activities.

John Maas

IA 96-100

A Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued December 12, 1996, to the above individual. The action was based on an inspection and a plea of guilty in U.S. District Court, in which the staff concluded that the individual deliberately violated the Deliberate Misconduct rule while serving as President of National Circuits Caribe, Inc., by abandoning devices containing byproduct material at the licensee's facility in Puerto Rico. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years. In addition, for a period of five years after the prohibition, he is to provide notice to the NRC of his involvement in NRC-licensed activities. The individual agreed to the action.

Daniel J. McCool

IA 94-017

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued August 26, 1994 to the above individual. The action was based on an investigation which determined that the above individual deliberately conspired with other AMSPEC officials to deceive the Commission and provided false testimony, under oath, to NRC officials. In addition the individual failed to train and certify employees in radiation safety as required by the AMSPEC license. The Order prohibits the individual from engaging in NRC licensed activities for a period of five years, and for a period of five years after the prohibition to notify the NRC when he will be involved in NRC-licensed activities.

Donald C. McDonald, Jr.

IA 96-018

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued March 27, 1996 to the above individual. The action was based on the individual providing incomplete and inaccurate information on forms he filed for unescorted access authorization at an NRC-licensed facility. The Order prohibits the individual from engaging in NRC licensed activities, and obtaining unescorted access to protected and vital areas of facilities licensed by the NRC, for a period of three years from the date of the Order.

Darryl D. McNeil

IA 97-001

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued March 24, 1997 to the above individual, a former security officer at Crystal River. The action was based on an investigation which determined that the individual deliberately conspired to cover up the loss of control of a security badge. The order removes the individual from engaging in NRC-licensed activities for a period of one year. In addition, following the prohibition, he is to provide notice of involvement in NRC-licensed activities for a one year period.

James Mulkey

IA 97-012

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued February 18, 1997 to the above individual, a former Vice President and Radiation Safety Officer at Power Inspection, Inc. The action was based on an inspection and investigation which concluded that the individual engaged in deliberate misconduct by: 1) submitting inaccurate information concerning eddy current qualification certification examination results and personnel certification summaries; 2) providing to the NRC a letter which contained inaccurate information relating to whether corrective actions had been taken in response to a previous Notice of Violation; and 3) providing false information to the NRC during a telephone discussion with a representative of the NRC. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years, and that if currently engaged in NRC-licensed activities to cease. In addition, the first time the individual engages in NRC-licensed activities following the five year prohibition, he is required to notify the NRC prior to the performance of NRC-licensed activities.

James C. Nelson

IA 97-004

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued January 27, 1997 to the above individual. The action was based on the deliberate misconduct involving: (1) use of a moisture density gauge after the license had been suspended, (2) supplying inaccurate information as to the Radiation Protection Officer, and (3) failure to have a Radiation Protection Officer for over eight years. The Order prohibits the individual's involvement in NRC-licensed activities for a period of five years.

Richard E. Odegard

IA 94-018

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued August 26, 1994 to the above individual. The action was based on the individual providing false testimony to the NRC, and deliberately failing to train and certify employees in radiation safety as required by the license conditions. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years and after the prohibition has expired requires him to provide notice to the NRC of acceptance of any employment in NRC-licensed activity for an additional five year period.

Jesus Osorio

IA 96-043

An Order Prohibiting Involvement in NRC-Licensed Activities was issued July 16, 1996 to the above individual. The Order was based on a violation of 10 CFR 30.10, which caused his former employer to be in violation of NRC requirements by failing to utilize trained and qualified individuals for the conduct of radiographic operations, and providing to the NRC materially inaccurate and incomplete information relating to radiographers training. The Order prohibits the individual from engaging in NRC-licensed activities for a period of five years, and for a period of five years following the prohibition is required to notify the NRC when he engages in or exercises control over NRC-licensed activities.

Cecil Ray Owen

IA 96-103

An Order Prohibiting Involvement in NRC-Licensed Activities was issued January 2, 1997 to the above individual. The action was based on an investigation which determined that the individual completed a background questionnaire for a position at North Anna and deliberately did not identify his previous employment where he was terminated for a positive drug test. The Order prohibits involvement in NRC-licensed activities for a period of one year and required him to notify NRC of his first involvement in NRC-licensed activities for one year following the prohibition period.

Hartsell S. Phillips

IA 94-001

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued March 10, 1994 to the above individual. The action was based on the individual's deliberate false statements to NRC officials and deliberate violations involving: (1) administration of excessive radiopharmaceutical dosages, (2) failure to provide training to nuclear medicine technologists, (3) failure to perform daily constancy checks of the licensee's dose calibrator, (4) failure to perform the required daily and weekly contamination radiation surveys, and (5) failure to maintain accurate and complete records required by NRC. The Order prohibits the individual from engaging in NRC-licensed activities for an NRC licensee or an Agreement State that is subject to NRC jurisdiction. The individual requested a Hearing on March 30, 1994. A settlement was signed September 19, 1995 with the agreement that the individual would refrain from involvement in NRC-licensed activities for a period of five years from the date of the Order and, for a period of five years after the prohibition, will notify NRC of becoming involved in NRC-licensed activities.

Douglas D. Preston

IA 94-004

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued April 5, 1994 to the above individual. The action was based on the individual's falsification of information on his application for unescorted access to the licensee's Duane Arnold Energy Center. When interviewed by the investigators, the individual admitted that he had falsified his criminal history and indicated he would do so

again. The Order prohibits the individual from involvement in licensed activities for a period of five years.

Roy Sadovsky, D.V.M.

IA 97-024

An Order Prohibiting Involvement in NRC-Licensed Activities was issued May 1, 1997 to the above individual. The action was based on: (1) the deliberate use of licensed material at a location not authorized on the license, (2) failure to secure from unauthorized removal or access licensed material that were stored in an unrestricted area, (3) failure to perform radiation surveys, (4) failure to supply and require the use of an individual monitoring device, (5) failure to conduct operations so that the dose in any unrestricted area from external sources does not exceed 2 millirem in any one hour, and (6) several failures to comply with DOT regulations. The order was issued precluding involvement in NRC-licensed material for a period of one year because of the deliberate violation.

Derek Stephens

IA 97-008

A Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities was issued April 15, 1997 to the above individual. The action was based on an inspection and investigation which concluded that the individual deliberately violated 10 CFR 30.10 and 10 CFR 34.33(a) by failing to wear personal monitoring devices while conducting radiographic activities and by failing to supervise his assistant as the assistant approached the exposure device without a survey instrument and attempted to disassemble the equipment. The Order removes the individual from engaging in NRC-licensed activities for a period of three years.

Rex Allen Werts

IA 94-035

An Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effective Immediately) was issued December 12, 1994 to the above individual. The action was based on an investigation that concluded that the above individual had deliberately falsified his identity to gain employment and unescorted access to the Brunswick facility. The Order prohibits the individual from engaging in NRC-licensed activities and from gaining unescorted access to protected and vital areas of NRC-licensed facilities for a period of three years. After the three year prohibition the individual shall provide notice to the NRC of any employment in NRC-licensed activity for an additional five year period.

Larry D. Wicks

IA 94-024

An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) was issued September 27, 1994 to the above individual. The action was based on inspections and investigations which concluded that the individual deliberately violated NRC requirements as to submitting a dosimeter for evaluation, evaluating an employee's radiation exposure, providing calibrated ratemeters, and by providing false information to the NRC. The Order removed the individual from NRC-licensed activities for a period of five years. In addition, the Order requires the

individual to provide notice to the NRC the first time following the prohibition that the individual engages in NRC-licensed activities. The individual requested a hearing on October 14, 1994. In a settlement approved on November 16, 1995, the individual agreed to withdraw from the hearing proceeding.

Marc W. Zuverink

IA 95-022

An Order Prohibiting Involvement in NRC-Licensed Activities and Requiring Certain Notification to NRC was issued June 27, 1995 to the above individual. The action was based on an investigation which determined that the individual stole tritium from the licensee's facility and transferred it to members of the public. The Order prohibits the individual from engaging in NRC-licensed activities for a period of ten years and requires that he provide notice to NRC for an additional five year period if he becomes involved in NRC-licensed activities.

Notices of Violation

David Kirkland

IA 97-010

A Notice of Violation was issued April 1, 1997 based on a violation involving the deliberate failure to follow procedures which require that a written directive be signed by an authorized user prior to administering radioactive material to a patient.

Michael S. Krizmanich

IA 97-014

A Notice of Violation was issued February 18, 1997 based on a violation involving the falsification of utilization logs by the individual's management at Power Inspection, Inc. The individual acknowledged that he was involved in the creating of one dozen false source utilization logs.

Lee Myers, Ph.D.

IA 97-017

A Notice of Violation was issued March 7, 1997 based on a violation involving the patient treatment with the High Dose Rate Afterloader (HDRA) even though the individual knew the HDRA had not received its required monthly quality assurance checks.

John R. Raskovsky

IA 97-037

A Notice of Violation was issued June 18, 1997 based on investigations which determined that the individual had deliberately falsified access authorization documents in order to obtain unescorted access to numerous NRC-regulated nuclear power plants. In February 1990, the individual had tested positive for cocaine metabolite and subsequent to that positive testing had obtained unescorted access to other NRC-regulated nuclear power plants by deliberately failing to disclose on the appropriate licensee forms the positive testing.

James P. Ryan

IA 97-007

A Notice of Violation was issued January 31, 1997 based on communication with Southern Nuclear Operating Company informing us of the operator's confirmed positive test for marijuana.

George W. Stewart

IA 97-015

A Notice of Violation was issued February 18, 1997 based on an inspection and investigation which determined that the individual helped to create false utilization logs. The logs were neither current nor created on the date of use of the source, but were created at a later time in order to address questions asked by the NRC during a previous NRC inspection.

Ronald Stewart

IA 97-018

A Notice of Violation was issued April 4, 1997 based on a violation involving the apparent falsification of access authorization program documentation associated with Crystal River. The individual failed to provide information concerning his multiple criminal convictions on his personnel history questionnaire.

A- ORDERS

January 6, 1997

EAs 96-152 and 96-301

Redesignated as IA 97-006

Shashi K. Agarwal, M.D.
290 Central Avenue
Orange, New Jersey 07050-3414

Dear Dr. Agarwal:

The Settlement Agreement that you agreed to on November 22, 1996, has been executed. A signed copy of the Agreement is enclosed (Enclosure 1). Pursuant to the terms of the Settlement Agreement, NRC is issuing the enclosed Settlement Order Terminating License and Prohibiting Involvement in Licensed Activities (Order) (Enclosure 2).

Under the terms of this Order, for a period of five years beginning November 22, 1996, you, as well as any successor entity, are prohibited from engaging in, or controlling, any NRC-licensed activity. Should you violate the terms of this Order, you may be subject to civil and criminal sanctions under sections 233 and 234 of the Atomic Energy Act of 1954, as amended.

If you have questions concerning this Order, you may reach me at 301-415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosures will be placed in the NRC Public Document Room.

Sincerely,

Original Signed By
James Lieberman

James Lieberman, Director
Office of Enforcement

Enclosures:

1. Settlement Agreement
2. Settlement Order

cc: Steven I. Kern, Esq.
1120 Route 22 East
Bridgewater, New Jersey 08807

Docket No. 030-32908
License No. 29-28784-01

UNITED STATES
NUCLEAR REGULATORY COMMISSION
BEFORE THE OFFICE OF ENFORCEMENT

In the Matter of)

SHASHI K. AGARWAL, M.D.
Orange, New Jersey

)
)
)

Docket No. 030-32908
License No. 29-28784-01
EA 96-152

SETTLEMENT AGREEMENT

1. Shashi K. Agarwal, M.D. (Dr Agarwal or licensee) is the holder of Byproduct Materials License No. 29-28784-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the possession and use of any byproduct material identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was issued on November 27, 1992, and is due to expire on December 31, 1997.
2. On September 12, 1996, an Order Suspending License (Effective Immediately) and Demand for Information (Order and Demand) was issued to the licensee based on the licensee's: (1) failure to comply with numerous NRC requirements, as identified during an NRC inspection conducted at the licensee's facility April 18 and 30, 1996; (2) providing apparent inaccurate information to the NRC; and (3) failure to cooperate with the NRC or appear for a predecisional enforcement conference. The Order and Demand required that the licensee provide responses in writing by October 2, 1996, and contained instructions for providing the responses. The licensee did not provide the required written responses. On October 7, 1996, Dr. Agarwal, through his attorney, contacted the NRC and indicated that he desired to terminate his license and enter into a settlement agreement to resolve all matters pending between the licensee and the NRC.

3. Dr. Agarwal and the NRC staff conclude that the following Settlement Agreement best serves the interests of the parties and the purposes of the Atomic Energy Act and the NRC's requirements:

- A. Dr. Agarwal agrees to transfer all NRC-licensed material to an authorized recipient within 30 days of the date that this Settlement Agreement is signed.
- B. Dr. Agarwal agrees to provide to the Regional Administrator, Region I, within seven days following the completion of the transfer:
 - i. a completed NRC Form 314 to certify that the licensed material has been transferred, and
 - ii. the results of a radiation survey, conducted and prepared in accordance with 10 CFR 30.36(j)(2), of the premises where licensed activities were performed.
- C. Dr. Agarwal agrees that NRC Byproduct Materials License No. 29-28784-01 shall be terminated upon written approval by NRC Region I of the information submitted under Section B above.
- D. Dr. Agarwal agrees that, for a period of five years from the date of the execution of this Settlement Agreement, neither he nor a successor entity shall be involved in or exercise any control over

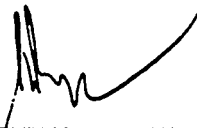
licensed activities within the jurisdiction of the NRC, including, but not limited to, involvement as owner, authorized user, controlling shareholder, or radiation safety officer.

E. The NRC will issue a Settlement Order to impose the requirements in A. through D. above. Dr. Agarwal waives the right to contest the Confirmatory Order in any manner, including the right to request a hearing on the Settlement Order.

F. The NRC agrees to take no further enforcement action for the matters set forth in the Order and Demand dated September 12, 1996.

FOR THE LICENSEE

Dated: 11/22/96

BY: 
Shashi K. Agarwal, M.D.

FOR THE NUCLEAR REGULATORY COMMISSION

Dated: 1/4/97

BY: 
James Lieberman, Director
Office of Enforcement

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	Docket No. 030-32908
SHASHI K. AGARWAL, M.D.	)	License No. 29-28784-01
Orange, New Jersey	)	EAs 96-152 and 96-301

SETTLEMENT ORDER TERMINATING LICENSE
AND PROHIBITING INVOLVEMENT IN LICENSED ACTIVITIES

I

Shashi K. Agarwal, M.D. (Dr. Agarwal or licensee) is the holder of Byproduct Materials License No. 29-28784-01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes the possession and use of any byproduct material identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was issued on November 27, 1992, and is due to expire on December 31, 1997.

II

On September 12, 1996, an Order Suspending License (Effective Immediately) and Demand for Information (Order and Demand) was issued to the licensee based on the licensee's: (1) failure to comply with numerous NRC requirements, as identified during an NRC inspection conducted at the licensee's facility April 18 and 30, 1996; (2) providing apparent inaccurate information to the NRC; and (3) failure to cooperate with the NRC or appear for a predecisional enforcement conference. The Order and Demand required that the licensee provide responses in writing by October 2, 1996, and contained instructions for providing the responses. To date, the licensee has not provided the required written responses.

III

On October 7, 1996, Dr. Agarwal, through his attorney, contacted the NRC and indicated that he desired to terminate his license and resolve all matters pending between himself and the NRC. As the parties desire to resolve all matters pending between them, the licensee has entered into a Settlement Agreement with the NRC executed on January 3, 1997. Under the terms of the Settlement Agreement, Dr. Agarwal agrees to the termination of his NRC license and that he will not apply for an NRC license or engage in NRC-licensed activities for a period of five years from the date of the execution of the Settlement Agreement; and the NRC agrees that it will take no further enforcement action for the matters set forth in the Order and Demand.

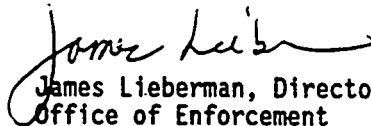
IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.204, and 10 CFR Parts 30 and 35, IT IS HEREBY ORDERED THAT:

- A. By February 7, 1997, Dr. Agarwal shall transfer all NRC-licensed material to an authorized recipient.
- B. Within seven days following the completion of the transfer, Dr. Agarwal shall provide to the Regional Administrator, Region I:

1. a completed NRC Form 314 to certify that the licensed material has been transferred, and
 2. the results of a radiation survey, conducted and prepared in accordance with 10 CFR 30.36(j)(2), of the premises where licensed activities were carried out.
- C. Upon written approval by NRC Region I of the information submitted under Section IV.B., NRC Byproduct Materials License No. 29-28784-01 is hereby terminated.
- D. For a period of five years from November 22, 1996, neither Dr. Agarwal nor a successor entity shall be involved in or exercise any control over licensed activities within the jurisdiction of the NRC, including, but not limited to, involvement as owner, authorized user, controlling shareholder, or radiation safety officer.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 6th day of January 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 1, 1995

IA 95-058

Five Star Products, Inc.
Construction Products Research, Inc.
ATTN: Mr. H. Nash Babcock,
401-534 Stillson Road
Fairfield, Connecticut 06430

SUBJECT: ORDER

Dear Mr. Babcock:

This refers to the limited inspection conducted on August 18 and 19, 1992, of the Five Star Products, Incorporated (Five Star) facilities in Fairfield, Connecticut. A copy of the inspection report is included as Enclosure 1 to this letter. This letter also addresses the NRC Office of Investigations (OI) Case 1-92-037R, which has been completed. A copy of the OI Report synopsis is included as Enclosure 2 to this letter.

Enclosure 3 is an Order being issued to Five Star, Construction Products Research, Inc. (CPR), and H. Nash Babcock based on the results of the inspection and investigation. The Order prohibits Five Star, CPR, or H. Nash Babcock from selling products or providing associated services to meet the requirements of 10 CFR Part 50 Appendix B and 10 CFR Part 21. Further, the Order provides that if Five Star, CPR or H. Nash Babcock desires to resume providing basic components and associated services to the nuclear industry that meet those requirements, then Five Star, CPR and H. Nash Babcock must comply with certain provisions of the Order.

A written response is not required to the Order. However, you may respond as provided in the Order. If Five Star, CPR or H. Nash Babcock desires to resume providing basic components and associated services to the nuclear industry for use in safety-related applications, Five Star, CPR, and H. Nash Babcock must respond to the Order, as well as comply with the other requirements stated in the Order.

This Order is effective in 20 days unless a hearing is requested.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order once it is effective shall be subject to criminal prosecution as set forth in that section.

The NRC is continuing to review various actions by Five Star and CPR and issuance of this Order does not preclude the NRC from taking further action in the future based on the outcome of those reviews.

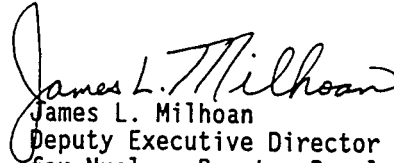
Five Star Products, Inc.

2

Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be placed in the NRC Public Document Room.

Sincerely,

A handwritten signature in dark ink, appearing to read "James L. Milhoan". The signature is fluid and cursive, with the first name "James" and last name "Milhoan" clearly legible.

James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations and Research

Enclosures: As Stated

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
FIVE STAR PRODUCTS, INC.	)	
and	)	IA 95-058
CONSTRUCTION PRODUCTS RESEARCH	)	
Fairfield, Connecticut	)	
and	)	
H. NASH BABCOCK	)	

ORDER

I

Five Star Products, Inc. (FSP), is a company located in Fairfield, Connecticut, and was formerly known as U.S. Grout Corporation. FSP manufactures and sells grout and concrete products to the nuclear industry and has done so for about 20 years. Through a holding company, Mr. Babcock owns FSP and several related businesses, including Construction Products Research, Inc. (CPR), which performs laboratory tests of FSP products. Mr. Babcock is Vice-President of FSP and President of CPR.

II

FSP submitted its grout and concrete products to CPR for testing. Following the tests, CPR issued certifications that it tested FSP products in conformance with certain specifications of the American Society for Testing and Materials. FSP subsequently utilized those certifications as the basis for certifying that its products satisfied Appendix B and customer Purchase Order (PO) requirements. At various times since 1980, FSP has advertised and represented to NRC licensees that its products are manufactured in accordance with the requirements of Appendix B. It has supplied products pursuant to purchase orders requiring FSP to meet the requirements of Appendix B, and 10

CFR Part 21. Licensees who have purchased material from FSP under FSP's certification of quality have used the grout and concrete in safety-related applications and as basic components.

The Nuclear Regulatory Commission (NRC or Commission) issued 10 CFR Part 21 (Part 21) to implement Section 206 of the Energy Reorganization Act of 1974. Part 21 imposes, *inter alia*, evaluation and reporting requirements on directors and responsible officers of firms which supply basic components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974. Basic components are structures, systems, or parts in which a defect or failure to comply with applicable requirements could create a substantial safety hazard. 10 CFR 21.3(a). Part 21 is implemented in conjunction with Appendix B, which contains the quality assurance (QA) criteria applicable to design, fabrication, construction, and testing of safety-related structures, systems, and components in commercial nuclear power plants. Together, these requirements are intended to assure the safety of safety-related components, materials, and services for nuclear power plants.

Section 206 of the Energy Reorganization Act of 1974 requires directors and responsible officers of firms constructing, owning, operating or supplying the basic components of a facility or activity licensed or regulated by the Atomic Energy Act of 1954, as amended, who obtain information regarding defects in those basic components, or failures of basic components, or of the facility to comply with NRC requirements, to notify the NRC of those defects and failures to comply. Section 206(d) authorizes the Commission to conduct inspections

and other enforcement activities necessary to insure compliance with that section. 10 CFR 21.41 and 21.51 implement Section 206(d).

III

The NRC conducts inspections of vendors who supply safety-related components pursuant to Appendix B and who supply basic components pursuant to Part 21. On August 18, 1992, the NRC began an unannounced inspection of FSP, and of its laboratory contractor, CPR, to determine the extent to which FSP supplied basic components to NRC licensees, the adequacy of FSP's QA Program, the adequacy of CPR's testing of FSP products, and the adequacy of FSP products.

Shortly after the inspection began, Mr. Babcock met with the inspection team and questioned the NRC's authority to conduct the inspection. Mr. Babcock was presented with two identical letters from the NRC staff, dated August 13, 1992, each addressed separately to FSP and CPR. The letters outlined the NRC's inspection authority under 10 CFR Part 21, Section 1610 of the Atomic Energy Act of 1954, as amended (AEA), and Section 206(d) of the Energy Reorganization Act of 1974, as amended (ERA). Despite this, Mr. Babcock continued to question the NRC's authority and, throughout the inspection, denied the inspectors access to inspect CPR's testing laboratory, which was located in the basement of FSP's Fairfield, Connecticut, headquarters, and access to inspect CPR's laboratory records.

During the inspection of August 18 and 19, 1992, the inspection team reviewed NRC power reactor licensee POs submitted to Five Star in order to determine

the scope of FSP's nuclear involvement. The team was provided with POs for the period 1988 to 1992. Those POs demonstrate that at least seven NRC reactor licensees and one licensee contractor had issued POs to FSP for safety-related grout and concrete mix products, and had specified compliance with Appendix B and Part 21.

The inspection team reviewed copies of several NRC licensee audit reports of FSP and CPR. These reports documented that NRC licensee requests to audit CPR's test laboratory and records were consistently denied by FSP. Further, several NRC licensee audit reports found that FSP's QA program was not acceptable and did not meet certain requirements of Appendix B.

The NRC inspection team requested copies of all audits performed by FSP of CPR to determine CPR's compliance with the quality assurance criteria of Appendix B and Part 21. Only one FSP audit of CPR was performed, by the FSP QA Manager, and it was provided to the NRC inspection team by the FSP QA Manager. The July 31, 1992 audit report concluded that CPR's June 10, 1992 QA program was satisfactory. The format and most of the language of this report were identical to a report of an audit conducted by Toledo Edison, an NRC Part 50 reactor licensee, of FSP's QA program in February 1991. The FSP QA Manager later admitted that he had not in fact conducted an audit of CPR, and that he had used the Toledo Edison audit report to fabricate the July 31, 1992 audit report of CPR.

On August 19, 1992, the second day of the inspection, Mr. Babcock told the inspectors to leave at the end of that day and not return until after Labor

Day. At 4:45 p.m. that day, Mr. Babcock was presented with another letter from the NRC staff which was witnessed by members of the inspection team and Mr. Henry Allen of FSP. This letter reiterated the legal authority of the NRC to conduct the inspection, and notified Mr. Babcock that continued refusals to permit inspection of FSP or CPR would be treated as a violation of 10 CFR 21.41, could result in enforcement action, and could be subject to treatment as a criminal violation in accordance with Sections 1610 and 223 of the AEA. Notwithstanding this second letter, Mr. Babcock continued to deny the NRC inspectors access to the CPR laboratory and to records of the CPR laboratory. The inspectors left the site at 5:00 pm as Mr. Babcock had requested.

The inspection team also requested copies of QA manuals for both FSP and CPR which would provide the basis to support FSP's certifications to licensees that its products were manufactured under an Appendix B Quality Assurance (QA) program. Copies of these documents were not furnished by FSP due to Mr. Babcock's suspension of further inspection activities.

As a result of FSP's and Mr. Babcock's curtailing the inspection, the inspection team was unable to review the implementation of FSP's QA Program against licensee POs or to inspect CPR's testing of FSP's grout and concrete mix products, and thus was unable to determine whether those products were produced, tested and provided in compliance with Appendix B and Part 21. Therefore, the NRC staff could not determine whether there was reasonable assurance that those FSP grout and concrete mix products were acceptable for use in safety-related applications in nuclear power plants.

Shortly thereafter, the NRC obtained a federal criminal search warrant, which was executed on September 1, 1992. Certain documents and testimonial evidence were taken.

Additionally, the NRC Office of Investigations conducted an investigation of the allegations leading to and the events surrounding the inspection. (OI Case No. 1-92-037). During the course of the OI investigation, Mr. Babcock instructed his attorney to forward to the NRC a letter dated February 18, 1994, which Mr. Babcock had composed and signed. The attorney forwarded the letter, in which Mr. Babcock stated: "We did not deny the NRC inspectors access to the laboratory in August 1992. Mr. John S. Ma, a civil engineer on the NRC inspection team, was escorted to the lab where he conducted an inspection of the test laboratory." As indicated above, and as known to Mr. Babcock, no NRC inspectors were allowed in the laboratory at any time during the August 1992 inspection and, therefore, the statement concerning Mr. Ma's access to and inspection of the CPR laboratory is deliberately false. The letter was material because it provided incorrect information to the NRC on a matter that was under investigation.

IV

Based on the facts discussed above, the NRC concludes that the following violations of NRC requirements occurred:

- A. 10 CFR 50.5, "Deliberate misconduct" prohibits any contractor (including a supplier or consultant), subcontractor, or any employee of a

contractor or subcontractor who knowingly provides to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part, from deliberately submitting to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Contrary to the above, the Quality Assurance Manager of Five Star Products, and Five Star Products through its Quality Assurance Manager, prepared an audit report for Five Star Products of the Construction Products Research QA Program, dated July 31, 1992, without conducting an audit of Construction Products Research, and provided that audit report to NRC inspectors during an inspection of Five Star Products on August 18-19, 1992, knowing that no such audit had been conducted. This audit report was material to the NRC because it was capable of influencing its determination of whether the Construction Products Research QA Program complied with Appendix B, and 10 CFR Part 21 requirements.

- B. Contrary to 10 CFR 50.5, Mr. H. Nash Babcock, the Vice President of Five Star Products, Inc. and the President of Construction Products Research, prepared and caused to be sent to the NRC a letter, in which Mr. Babcock stated that one NRC inspector had been allowed to and did in fact inspect the laboratory test facility of Construction Products Research on August 19, 1992. In fact, as Mr. Babcock knew, no NRC inspector was

permitted to inspect the laboratory facilities of Construction Products Research during the August 18-19, 1992 inspection. The letter was material to the NRC because it provided information directly related to a matter under investigation by the NRC, specifically, whether Mr. Babcock had deliberately denied NRC inspectors access to the Construction Products Research test facility in violation of NRC requirements.

- C. 10 CFR 21.41 requires that each individual, corporation, partnership or other entity subject to the regulations in Part 21 shall permit duly authorized representatives of the Commission to inspect its records, premises, activities, and basic components as necessary to effectuate the purposes of Part 21.

10 CFR 21.51(b) requires, in part, that each individual, corporation, partnership or other entity subject to the regulations in Part 21 must afford the Commission, at all reasonable times, the opportunity to inspect records pertaining to basic components.

Contrary to the above, on August 18 and 19, 1992, Five Star Products, Inc., through H. Nash Babcock, Vice President of Five Star Products, and Construction Products Research, Inc., through H. Nash Babcock, President of Construction Products Research, denied NRC inspectors access necessary to conduct an inspection of Five Star Products' contracted laboratory test facility, Construction Products Research, for, and of Construction Products Research records of test data associated with,

safety-related grout and concrete mix products sold by Five Star Products to nuclear power plants licensed under 10 CFR Part 50, pursuant to purchase orders specifying compliance with Appendix B and 10 CFR Part 21. Mr. Babcock also refused to allow NRC inspectors reasonable access to CPR laboratory personnel. By terminating the inspection, Mr. Babcock also prevented NRC inspectors from completing their examination of Five Star records.

V

The NRC and its licensees must be able to rely on licensee contractors and ^F officers of licensee contractors, including providers of safety-related basic components such as Five Star Products, Inc., and suppliers of services associated with basic components, such as Construction Products Research, Inc., to comply with NRC requirements, including the requirements to provide accurate and complete information in all material respects and the requirements to permit inspection of their records, premises, activities and components. Five Star Products' and Mr. H. Nash Babcock's violations of 10 CFR 21.41, 21.51(b), and 50.5 demonstrate that Five Star Products and its Vice President, Mr. Babcock, are unable or unwilling to comply with NRC requirements to permit inspections and to provide complete and accurate information to the NRC in all material respects. In addition, they did not permit NRC licensees access to CPR's facilities in order to conduct necessary audits. Construction Products Research's and Mr. Babcock's violation of 10 CFR 21.41, 21.51(b), and 50.5 demonstrate that Construction Products Research and its President, Mr. Babcock, are unable or unwilling to comply with NRC

requirements to permit inspections by the NRC or its licensees and to provide complete and accurate information to the NRC in all material respects.

Consequently, I lack the requisite reasonable assurance that the NRC and NRC licensees can rely on the statements or certifications of Five Star Products, Inc., Construction Products Research, Inc., or Mr. H. Nash Babcock, that basic components of Five Star Products, Inc. or associated services of Construction Products Research, Inc. meet NRC requirements necessary to protect public health and safety. Therefore, I find that the public health, safety, and interest require that Five Star Products, Inc., Construction Products Research, Inc. and Mr. Babcock (1) be prohibited from providing structures, systems, and components subject to a procurement contract specifying compliance with Appendix B, or basic components subject to a procurement contract specifying compliance with 10 CFR Part 21, and (2) must respond to this Order and take certain other actions if they desire to provide such products to NRC licensees who specify that they must meet the requirements of Appendix B, or 10 CFR Part 21¹.

VI

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, Section 206 of the Energy

¹This does not prohibit FSP from supplying commercial grade materials to NRC licensees, or CPR from testing and certifying commercial grade materials to NRC licensees, provided that no representations are made with regard to FSP products being qualified for safety-related applications in nuclear power plants based on compliance with 10 CFR Part 50, Appendix B, or that 10 CFR Part 21 requirements have been met.

Reorganization Act, as amended, and the Commission's regulations at 10 CFR 2.202, 10 CFR Parts 21 and 50, and 10 CFR 50.5, IT IS HEREBY ORDERED, THAT:

1. Until Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock, and any concern which is owned, controlled, operated or managed by H. Nash Babcock, satisfy the provisions of paragraph 2., below, they are prohibited from:
 - A. providing or supplying structures, systems, or components, including grout and concrete, subject to a procurement contract specifying compliance with Appendix B; and
 - B. providing or supplying basic components, including grout and concrete, subject to a procurement contract specifying that the contract is subject to the requirements of 10 CFR Part 21;
- 2.A. If Five Star Products, Inc., Construction Products Research Inc., or any concern owned, controlled, operated or managed by H. Nash Babcock, desires to lift the prohibition specified in paragraph 1, above, then Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock or the concern owned, controlled, operated, or managed by H. Nash Babcock, shall, at least 90 days prior to the date it desires to have the prohibition lifted:
 - (1) Advise the NRC of that intent in writing;
 - (2) Respond in writing under oath or affirmation specifically as to each of the violations listed in Section IV, including: (a) an admission or denial of the alleged violation, (b) the reasons for the violation if admitted, and if denied, the reasons why, (c) the

corrective steps that have been taken and the results achieved,
(d) the corrective steps that will be taken to avoid further violations, and (e) the date when full compliance will be achieved;
(3) Agree in writing, under oath or affirmation, and in fact, to permit the NRC, NRC licensees, and contractors performing QA functions for such licensees, to inspect the records, premises, basic components and activities of Five Star Products, Inc., of Construction Products Research, Inc., or of any concern owned, controlled, operated or managed by H. Nash Babcock that desires to provide safety related products or basic components, or to perform tests to support claims that those products or components and those testing services meet the standards of Appendix B and 10 CFR Part 21, and to signify in writing a willingness to do so in the future;
(4) Agree in writing under oath or affirmation to demonstrate and in fact to demonstrate that those basic components and services associated with basic components meet the standards of Appendix B by having tests performed by an independent third party and having that third party provide copies of the results of those tests directly to the NRC; and
(5) The officers, managers, and supervisors of Five Star Products, Inc. and Construction Products Research, Inc. provide statements

that they understand that the activities and records of the organization are subject to NRC inspection, that communications with the NRC must be complete and accurate, and that any employee may provide information to the NRC at any time without fear of retribution; and

- B. When all conditions of paragraph 2.A. above have been satisfied, and the NRC has conducted inspections of the QA program and Part 21 program of Five Star Products, Inc., Construction Products Research, Inc., and any concern owned, controlled, operated, or managed by H. Nash Babcock, and any necessary corrective action has been completed, the prohibition of paragraph 1, above, will be lifted in writing.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Five Star Products, Inc., Construction Products Research, Inc., and Mr. H. Nash Babcock of good cause.

VII

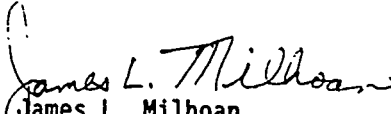
In accordance with 10 CFR 2.202, Five Star Products, Inc., Construction Products Research, Inc., and H. Nash Babcock, or any other person adversely affected by the Order, may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer

may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Five Star Products, Inc., Construction Products Research, Inc., and H. Nash Babcock, and any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555, to the Assistant General Counsel for Hearings and Enforcement and the Director, Office of Nuclear Reactor Regulation, both at the same address. If a person other than Five Star Products, Inc., Construction Products Research, Inc., or H. Nash Babcock requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Five Star Products, Inc., Construction Products Research, Inc., H. Nash Babcock, or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section VI above shall be effective and final 20 days from the date of this Order without further order or proceedings.

FOR THE NUCLEAR REGULATORY COMMISSION


James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Dated at Rockville, Maryland
this 1st day of December 1995

SYNOPSIS

On September 30, 1992, an investigation was initiated concerning an allegation that Five Star Products, Inc. (Five Star), improperly tested and falsely certified material that was purchased from them by the nuclear power industry. During an unannounced August 18 and 19, 1992, inspection conducted by the NRC Vendor Inspection Branch (VIB), the NRC inspectors were denied access to Five Star's certification testing laboratory (i.e., Construction Products Research (CPR)). Also, during the course of the inspection, a potentially false audit report was provided to the inspectors for their review. This audit report of CPR was produced by Five Star's Quality Assurance (QA) Manager. On September 1, 1992, as a result of the denial of access, a Federal search warrant was obtained and executed on Five Star, with documents and other physical and testimonial evidence taken.

The OI investigation concludes that Five Star provided three inaccurate product certifications to nuclear power plants, in that Five Star's laboratory (CPR) did not possess the proper equipment to perform a specific test referenced on the certifications. However, from the evidence developed, it has not been substantiated that the creation of the inaccurate certifications was deliberate.

The OI investigation also concludes that the President of CPR willfully denied the NRC inspectors access to the testing laboratory.

The OI investigation further concludes that the Five Star QA Manager deliberately generated an audit report of CPR, without conducting the audit, and provided this report to the inspectors during the inspection.

In addition, during the course of the investigation, the president of CPR caused a letter to be sent the NRC, in which he stated that one of the NRC inspectors had been allowed to inspect the laboratory. That information is refuted by the inspectors. It is therefore concluded that the letter was submitted, knowingly containing false information.

December 28, 1995

Michael F. McBride, Esq.
LeBoeuf, Lamb, Greene & MacRae
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009-5728

SUBJECT: ORDER - IA 95-058 FIVE STAR PRODUCT, INC., CONSTRUCTION PRODUCTS
RESEARCH, INC., AND H. NASH BABCOCK

Dear Mr. McBride:

I have received your letters of December 27, 1995, in regard to the Stipulation to resolve the matter and also Mr. William N. Babcock's position regarding a hearing. I have executed the Stipulation and a signed copy is enclosed along with a letter concerning Mr. William N. Babcock. I will forward the Stipulation to the Federal Register.

I appreciate your cooperation in this matter.

Sincerely,

/s/

James Lieberman, Director
Office of Enforcement

Enclosure: As Stated

cc: J. Goldberg, OGC
SECY

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
FIVE STAR PRODUCTS, INC.	)	
and	)	No. IA 95-058
CONSTRUCTION PRODUCTS RESEARCH	)	
Fairfield, Connecticut	)	
and	)	
H. NASH BABCOCK	)	

STIPULATION BETWEEN NUCLEAR REGULATORY
COMMISSION AND FIVE STAR PRODUCTS, INC.,
CONSTRUCTION PRODUCTS RESEARCH, INC., AND H. NASH BABCOCK

Representatives of the Nuclear Regulatory Commission ("NRC") and Five Star Products, Inc., Construction Products Research, Inc. ("the Companies"), and H. Nash Babcock have met and have decided to resolve this matter as addressed in this Stipulation as set out below.

STIPULATION

The NRC, the Companies, and H. Nash Babcock stipulate to the following:

1. The Companies and H. Nash Babcock are free to sell commercial-grade products to anyone in the nuclear industry, as they now do. "Commercial-grade" is defined as in 10 C.F.R. Part 21 of the Commission's regulations. Five Star Products' commercial-grade materials may be used in any safety-related applications provided that NRC licensees properly dedicate the materials for use as basic components and verify their suitability for the applications. As of the date of the

settlement, NRC has not evaluated the quality of Five Star Products' materials, nor has the NRC received reports that Five Star Products' materials contain defects.

2. The NRC hereby relaxes and modifies paragraphs 1 and 2 of Section VI of the Order as follows:

"1. Until the Companies or H. Nash Babcock or any concern which is owned, controlled, operated or managed by H. Nash Babcock, satisfy the provisions of paragraph 2 below, they are prohibited from:

A. providing or supplying structures, systems, or components, including grout and concrete, subject to a procurement contract specifying compliance with 10 C.F.R. Part 50 Appendix B; and

B. providing or supplying basic components, including grout and concrete, subject to a procurement contract specifying that the contract is subject to the requirements of 10 CFR Part 21;

2.A. If the Companies, or any concern owned, controlled, operated or managed by H. Nash Babcock, desire to lift the prohibitions specified in paragraphs 1.A and 1.B, above, then the Companies, H. Nash Babcock, or the concern owned, controlled, operated, or managed by H. Nash Babcock, shall, at least 90 days prior to the date it desires to have the prohibition lifted:

- (1) Advise the NRC of that intent in writing;
- (2) Deleted.

(3) Agree in writing, under oath or affirmation, and in fact, to permit the NRC, NRC licensees, and contractors performing QA functions for such licensees, to inspect the records, premises, basic components and activities of the Companies or of any concern owned, controlled, operated or managed by H. Nash Babcock that desires to provide safety-related products or basic components, or to perform tests to support claims that those products or components and those testing services meet the standards of 10 CFR Part 50 Appendix B and 10 CFR Part 21, and to signify in writing a willingness to do so in the future;

(4) Agree in writing under oath or affirmation to demonstrate and in fact to demonstrate that those basic components and services associated with basic components meet the standards of 10 CFR Part 50 Appendix B by having tests performed by a mutually acceptable third party and having that third party provide copies of the results of those tests directly to the NRC; and

(5) The officers, managers, and supervisors of the Companies provide statements that they understand that the activities and records of the organization are subject to NRC inspection and that communications with the NRC must be complete and accurate;

B. When all conditions of paragraph 2.A above have been satisfied, and the NRC has conducted inspections of the QA program and Part 21 program of the Companies or of any concern owned, controlled, operated, or managed by H. Nash Babcock, and

any necessary corrective action has been completed, the prohibitions of paragraphs 1.A and 1.B, above, will be lifted in writing."

3. Except for the enforcement action reflected in the above-relaxed Order and this Stipulation, the NRC will neither impose, nor seek to impose, any sanction (other than as set forth in the relaxed Order and Stipulation) on the Companies or their officers and employees or H. Nash Babcock for the alleged violations described in the NRC Order issued on December 1, 1995.

4. All matters involving the termination of employment of Mr. Edward P. Holub are not covered by, or affected by, this Stipulation, the Stipulation is without prejudice to the parties' positions with respect to the Commission's jurisdiction or lack thereof over employment matters, and the NRC, the Companies, any other related company, and H. Nash Babcock retain all rights in any such case, matter, proceeding, or litigation now pending or which may hereinafter be instituted.

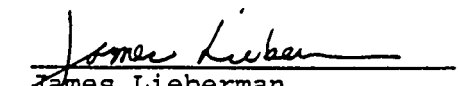
5. In light of this Stipulation, the Companies and H. Nash Babcock agree not to request a hearing on the matters addressed in the Order issued on December 1, 1995 and relaxed as described herein, despite their vigorous disagreement with some of the allegations contained in the December 1, 1995 Order.

6. The NRC, the Companies, and H. Nash Babcock agree that the allegations in the Order have not been made subject to an evidentiary hearing, and that this Stipulation will obviate the necessity for such a hearing, and they therefore agree that those allegations shall not estop any party from taking a

different position on such matters in any other case, litigation, matter, or proceeding.

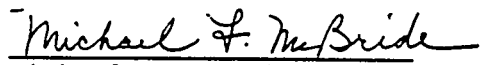
7. The Order as relaxed herein shall be effective upon execution of this Stipulation. This Stipulation shall be published in the Federal Register.

8. The persons signing below certify by their signatures that they have authority to sign this Stipulation for the entities appearing below their names.


James Lieberman
Director
Office of Enforcement
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555-0001
(301) 415-2741

For the United States Nuclear
Regulatory Commission

Dated: December 28, 1995


Michael F. McBride
LeBoeuf, Lamb, Greene
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1875 Connecticut Avenue, N.W.
Suite 1200
Washington, D.C. 20009-5728
(202) 986-8000

Attorney for Five Star
Products, Inc., Construction
Products Research, Inc.,
and H. Nash Babcock



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

AUG 26 1994

IA 94-020

Mr. Paul A. Bauman
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

Dear Mr. Bauman

SUBJECT: ORDER REQUIRING NOTIFICATION TO NRC PRIOR TO INVOLVEMENT IN NRC-
LICENSED ACTIVITIES (EFFECTIVE IMMEDIATELY)

The enclosed Order Requiring Notification of Involvement in NRC-Licensed Activities (Effective Immediately) is being issued as a consequence of your actions while employed by the American Inspection Company, Inc., (AMSPEC) between late 1989 and March 1, 1992. The NRC Office of Investigations (OI) conducted an investigation and concluded that you deliberately: (1) falsified employee training records of numerous radiography employees of AMSPEC; (2) failed to train numerous radiography employees of AMSPEC; (3) provided examinees with answers to examination questions and personally aided and assisted employees in order to achieve required test scores; (4) provided false information to the Commission regarding the qualification of AMSPEC employees in an NRC license amendment application; (5) falsified records of quarterly personnel radiation safety audits; and (6) submitted false information regarding the training and qualification of two individuals to the Commission in an application for an NRC license renewal. As detailed in the enclosed Order, your actions caused AMSPEC to be in violation of 10 CFR 30.9, 34.11, and 34.31 of the Commission's requirements.

Your assistance to the United States Attorney in his development of cases against others is appreciated. As a result, we are not prohibiting you from working in NRC-licensed activities. However, we believe that it is appropriate that the NRC be notified when you become involved in NRC licensed activities. Therefore, the enclosed order is being issued to you. Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

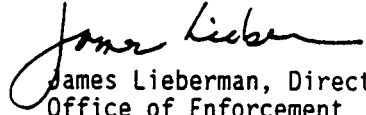
Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 504-2741.

Paul A. Bauman

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Paul A. Bauman

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)
)
)

IA 94-020

ORDER REQUIRING NOTIFICATION PRIOR TO
INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Paul A. Bauman has been employed in the field of industrial radiography since approximately 1981. In April 1987, Mr. Bauman was hired by the American Inspection Company, Inc., (Licensee or AMSPEC). AMSPEC held Materials License No. 12-24801-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. This license authorized the conduct of industrial radiography activities in accordance with specified conditions. On April 30, 1992, the License was suspended as a result of significant safety violations and related safety concerns. Mr. Bauman was a Vice President and Radiation Protection Officer of AMSPEC when a majority of the violations discussed below occurred.

II

Between August 22, 1991 and November 12, 1992, the NRC Office of Investigations conducted an investigation of licensed activities at AMSPEC. During the course of this investigation, the License was suspended because a significant number of safety violations were uncovered. In addition, the investigation revealed that Mr. Bauman, in his capacity as a Vice President and Radiation Protection Officer of AMSPEC, deliberately: (1) falsified employee training records of numerous radiography employees of AMSPEC; (2) failed to train and certify numerous radiography employees of AMSPEC; (3)

provided examinees answers to examination questions and personally aided and assisted employees in order to achieve required test scores; (4) provided, with co-conspirator Daniel McCool, false information to the Commission regarding the qualification of AMSPEC employees in an NRC license amendment application; (5) falsified records of quarterly personnel radiation safety audits; and (6) submitted false information regarding the training and qualification of two individuals to the Commission in an application for an NRC license renewal.

10 CFR 34.31(a) provides that a licensee shall not permit any individual to act as a radiographer until such individual: (1) has been instructed in the subjects outlined in Appendix A of 10 CFR Part 34; (2) has received copies of and instruction in NRC regulations contained in 10 CFR Part 34 and in the applicable sections of 10 CFR Parts 19 and 20, NRC license(s) under which the radiographer will perform radiography, and the licensee's operating and emergency procedures; (3) has demonstrated competence to use the licensee's radiographic exposure devices, sealed sources, related handling tools, and survey instruments; and (4) has demonstrated understanding of the instructions in this paragraph by successful completion of a written test and field examination on the subjects covered. AMSPEC submitted a Radiation Safety Manual as a part of its license application dated September 20, 1986. A part of this manual prescribes the licensee's employee training program to satisfy the requirements of Appendix A of 10 CFR Part 34. This manual was incorporated as a part of License Condition 17 of the AMSPEC license. In addition, 10 CFR 34.11(d)(1) requires, in part, that an applicant have an inspection program that includes the observation of the performance of each radiographer and radiographer's assistant during an actual radiographic

operation at intervals not to exceed three months. AMSPEC had an approved audit program that was incorporated as part of License Condition 17 to meet the requirements of 10 CFR 34.11(d)(1). 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, or information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects. 10 CFR 30.10(a) requires, in part, that any licensee or any employee of a licensee may not: (1) engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, order, or term of any license, issued by the Commission, or (2) deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Between late 1989 and March 1, 1992, Mr. Bauman deliberately caused AMSPEC to violate 10 CFR 34.31 by failing to train and certify numerous radiography employees of AMSPEC as required and caused AMSPEC to violate 10 CFR 30.9 by deliberately falsifying training records to show that numerous employees of AMSPEC stationed at the Hess facility on St. Croix were properly trained in radiation safety. During 1990 and 1991, Mr. Bauman violated License Condition 17 by providing unauthorized and improper aid to AMSPEC employees taking radiation safety examinations in that Mr. Bauman: (1) allowed the use of reference material during closed-book examinations; (2) permitted examinees to complete examinations in an untimed, unmonitored setting; and (3) directly provided the examinees with answers to test questions. In June of 1990, Mr. Bauman caused AMSPEC to violate 10 CFR 30.9 by preparing an NRC license amendment letter to the NRC that deliberately contained false information regarding the qualification of three AMSPEC employees. In July and August of

1991, Mr. Bauman caused AMSPEC to violate 10 CFR 30.9 and 10 CFR 34.11 by deliberately falsifying records of quarterly personnel radiation safety audits. In November of 1991, Mr. Bauman caused AMSPEC to violate 10 CFR 30.9 by conspiring with and directing his secretary to physically write answers on a required radiation safety test by annotating on the test the name of an AMSPEC employee and placing it in that employee's radiation safety records. Mr. Bauman violated 10 CFR 30.10 by deliberately submitting false information regarding the training and qualification of two individuals to the Commission in a December 20, 1991 application for an NRC license renewal.

On December 17, 1992, Mr. Bauman pled guilty to two felony counts. The first count involved conspiracy to violate 42 U.S.C. 2273 (section 223 of the Atomic Energy Act). The second count consisted of deliberately providing false information to the NRC in violation of 42 U.S.C. 2273 and 42 U.S.C. 2201b (section 161b of the Atomic Energy Act) and 10 CFR 30.9 and 10 CFR 30.10(a)(2) of the Commission's regulations.

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. As a Vice President and Radiation Protection Officer (RPO) of AMSPEC, Mr. Bauman was responsible for ensuring that the Commission's regulations and License conditions were met and that records which were required to demonstrate compliance with the Commission's regulations and License conditions were true and accurate in all material aspects. Mr. Bauman's deliberate actions in

causing the Licensee to violate 10 CFR 30.9, 34.11, and 34.31 and License Condition 17, and his deliberate misrepresentations to the NRC, are unacceptable and raise a question as to whether he can be relied on at this time to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, the NRC needs the capability to monitor his performance of licensed activities in order to be able to maintain the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Bauman is employed in NRC-licensed activities. Therefore, the public health, safety and interest require that for a period of three years from the date of this Order, Mr. Bauman shall notify the NRC of his employment by any person or entity engaged in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Bauman's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this order be effective immediately.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

For a period of three years from the date of the Order, Paul A. Bauman shall: Within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. In the first notification Mr. Bauman shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Bauman of good cause.

V

In accordance with 10 CFR 2.202, Paul A. Bauman must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and

shall set forth the matters of fact and law on which Mr. Bauman or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Paul A. Bauman if the answer or hearing request is by a person other than Paul A. Bauman. If a person other than Paul A. Bauman requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Paul A. Bauman or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Paul A. Bauman, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this ~~10~~¹¹ day of August 1994

SYNOPSIS

On August 22, 1991, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region II, requested an investigation to determine whether officials, managers, and/or employees of The American Inspection Company, Inc. (AMSPEC), the licensee, had intentionally violated regulatory and license condition requirements set forth in 10 CFR Parts 20, 30, and 34 and the NRC license of January 15, 1987, respectively. According to reported allegations, licensee management officials had permitted unqualified technicians to perform radiography operations at the Hess Oil Virgin Islands Company (HOVIC) facility, St. Croix, U.S. Virgin Islands, which had contracted with AMSPEC for nondestructive examination services. Additionally, licensee officials allegedly: (1) discriminated (involuntary termination) against technicians for reporting radiation health and safety concerns, (2) falsified radiation safety training documents, (3) provided false and misleading information to the NRC, and (4) used source material in a manner not authorized by the license (irradiation of mice).

The Office of Investigations (OI) reviewed the circumstances of the alleged regulatory and license condition violations during which other improprieties by the licensee were identified. The investigation by OI did not substantiate that licensee management officials had terminated radiography technicians for reporting radiation health and safety concerns. It was concluded, however, that these licensee officials at the HOVIC facility appeared insensitive to employee concerns of all topics, including radiation safety, and they were perceived by technicians as acting with apparent disregard concerning this issue. The investigation further determined that licensee officials deliberately provided false and misleading radiation safety-related information to NRC representatives which was pertinent to the regulatory process. The investigation substantiated that the licensee, through actions of some radiation protection officers (RPOs), deliberately falsified radiation safety training records, inserted false records in technician files to give the impression required training was accomplished, and they also conspired to conceal these training deficiencies and improprieties from the NRC. The investigation surfaced and substantiated the allegation that licensee officials and RPOs deliberately falsified required personnel radiation safety audits and accompanying reports and they also created audit reports to make complete the radiation safety files of some technicians.

The investigation also disclosed and confirmed numerous instances of radiographers' assistants performing radiography without supervision and the deliberate falsification of source utilization logs to give the appearance that required supervision was present, all with the apparent knowledge and concurrence of licensee management officials. It was also determined during the investigation that licensee training officials (RPOs) frequently

failed to provide the Operation and Emergency Procedures (O&EP) Manual to new employees prior to source utilization. The investigation also determined that some licensee RPOs were not trained, examined, and certified according to Radiation Safety Program requirements and AMSPEC officials, including the radiation safety officer (RSO) and several RPOs, were aware of some of these violations and failed to correct them. Further, on at least one occasion, the RSO and an RPO conspired to concoct a plausible explanation for the NRC as to why RPO examination/certification requirements were violated.

The investigation substantiated the allegation that radioactive source material was utilized improperly when an AMSPEC night shift supervisor, in the presence of technicians, radiographed a mouse during two to three consecutive source exposures at the HOVIC facility. The OI investigation, and a previous NRC inspection at the St. Croix location, also revealed instances in which AMSPEC technicians failed to observe required surveying and posting activities during radiography operations, actions which demonstrated either an apparent disregard for regulations and/or radiation safety training deficiencies. Finally, the investigation disclosed that the RSO and other licensee management officials deliberately failed to perform required radiation safety review, evaluation, and oversight functions and responsibilities during the past 3 years.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 15, 1994

IA 94-032

Michael J. Berna
[ADDRESS DELETED]
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)
(NRC INSPECTION REPORT NO. 030-04325-92001)
(NRC INVESTIGATION REPORT NO. 3-92-035R)

Dear Mr. Berna:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) (Order) is being issued as a consequence of your actions while employed as the Radiation Safety Officer at the Amoco Refinery, Whiting, Indiana, in 1992. This Order prohibits your involvement in NRC-licensed activities for a period of three years from the date of this Order.

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section.

Questions concerning this Order may be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Enclosures:

1. Order Prohibiting Involvement
in NRC Licensed Activities
2. Notice of Violation and Proposed
Imposition of Civil Penalties to Amoco

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MICHAEL J. BERNA

)
)
)

IA 94-032

ORDER PROHIBITING INVOLVEMENT
IN NRC LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Amoco Oil Company (Amoco or Licensee) was the holder of Byproduct Material License No. 13-00155-10 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorized the use of byproduct material (iridium-192 and cobalt-60) for industrial radiography in devices approved by the NRC or an Agreement State. The facility where licensed materials were authorized for use and storage was located at 2815 Indianapolis Boulevard, Whiting, Indiana. The use of licensed material was authorized at temporary job sites anywhere in the United States where the United States Nuclear Regulatory Commission maintains jurisdiction for regulating the use of licensed material. The License was originally issued on February 4, 1958, and was terminated on October 19, 1993.

Mr. Michael J. Berna performed duties as the Licensee's Radiation Safety Officer (RSO) from March 1990 until he was relieved of those duties on October 16, 1992.

II

On July 27, 1992, the NRC Region III office received information that Mr. Berna had not conducted field audits of radiographers and radiographer's assistants as required by license conditions and that Mr. Berna fabricated reports for the audits that he did not perform by documenting that the audits

had been performed. The NRC conducted an inspection at the Licensee's Whiting, Indiana, refinery from September 15 to October 9, 1992. The NRC Office of Investigations (OI) subsequently conducted an investigation. The Licensee conducted an investigation contemporaneously with the NRC inspection and investigation. Deliberate violations of NRC requirements were identified as a result of the NRC inspection and the investigation.

Condition 18.A of License No. 13-00155-10 incorporates the statements, representations, and procedures contained in the license application dated March 28, 1990. Item 10.3 of that application required, in part, that practicing radiographers and radiographer's assistants are to be audited at intervals not to exceed 3 months to meet the requirements of 10 CFR Part 34 and the Licensee's Operating and Emergency Procedures, and that the audits should be unannounced insofar as possible. Item 10.5 of that application required, in part, that certain records be generated and maintained, including a record of quarterly audits of radiographers and radiographer's assistants.

Mr. Berna admitted to the NRC in a sworn, transcribed interview on October 7, 1992, that he knowingly failed to perform the required audits and that he deliberately falsified records to show that audits had been performed on at least ten occasions (February 6, 10, 12, and 29, April 11, 22, 24, and 29, May 12, and September 1, 1992).

In addition, during the September 15, 1992, inspection the NRC inspector asked Mr. Berna if the field audits of radiographers and radiographer's assistants were unannounced. Mr. Berna told the NRC inspector that he did not give any advance notification to radiography personnel. However, the testimony of

eight radiographers or radiographer's assistants indicated that Mr. Berna always informed them when he would be performing an audit.

Testimony provided by an Assistant Radiation Safety Officer (ARSO) on November 5, 1992, indicated that at the request of Mr. Berna on or about September 15, 1992, the ARSO falsified at least two records of audits of radiographers and radiographer's assistants for May 1992. Also, testimony provided to OI by another ARSO on December 17, 1992, indicated that at the request of Mr. Berna during August 1991, this ARSO falsified at least two records of audits of radiographers and radiographer's assistants.

These actions are contrary to the audit requirements and the records generation and maintenance requirements of the License, and a violation of 10 CFR 30.9(a), "Completeness and Accuracy of Information," and 10 CFR 30.10(a)(1) and (2), "Deliberate Misconduct," of the Commission's regulations.

The Licensee conducted an internal investigation and based on the results of its investigation the Licensee suspended Mr. Berna's employment for one month without pay. On December 1, 1992, a Confirmatory Order Modifying License (Effective Immediately) was issued to the Licensee, which confirmed, among other things, that the Licensee would prohibit Mr. Berna from participating in any NRC licensed activities, including the position of RSO.

III

Based on the above, it appears that Mr. Berna engaged in deliberate misconduct from August 1991 through approximately September 15, 1992, by failing to conduct field audits of radiographers and radiographer's assistants at the interval specified in the NRC Byproduct Material License, and by creating false records for audits which he did not conduct, thus making the record appear as though a field audit was performed at the specified interval. Mr. Berna also engaged in deliberate misconduct when he requested two ARSOs to falsify field audit records. Mr. Berna engaged in additional misconduct when he told an NRC inspector that field audits of radiographers or radiographer's assistants were unannounced. Mr. Berna's actions caused the Licensee to be in violation of the Amoco License, as well as 10 CFR 30.9, and constituted violations of 10 CFR 30.10 of the Commission's regulations. As the Licensee's RSO, Mr. Berna supervised the radiation safety program associated with NRC Byproduct Material License No. 13-00155-10 and was responsible for ensuring that the Commission's regulations and license conditions were met.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Berna were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Berna be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Berna is required to notify the NRC of his first employment in NRC-licensed activities licensed by the NRC following the prohibition period. Furthermore, pursuant to 10 CFR

2.202, I find that the significance of Mr. Berna's conduct described above is such that the public health, safety and interest require that this Order be immediately effective. A longer period was not imposed because of the issuance of the December 1, 1992 Confirmatory Order Modifying License (Effective Immediately).

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, and 10 CFR Part 34, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Michael J. Berna is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
- B. The first time Mr. Berna is employed in NRC-licensed activities following the three-year prohibition, he shall, within 20 days of his acceptance of the employment offer involving NRC-licensed activities, notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, and the Regional Administrator, NRC Region III. The notice shall include the name, address, and telephone number of the employer or the entity where he is, or will be, involved

in the NRC-licensed activities. In the first notification, Mr. Berna shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Berna of good cause.

V

In accordance with 10 CFR 2.202, Mr. Berna must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Berna or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address; to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351; and to Mr. Berna, if the answer or hearing request is by a person other than Mr. Berna. If a person other than Mr. Berna requests a hearing, that person

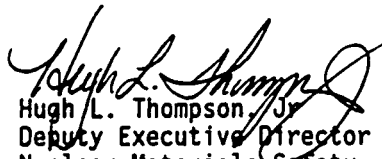
shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Berna or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Berna, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 5th day of November 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

SEP 08 1994

Docket No. 030-02551
License No. 29-12417-01
IA 94-023

Jerome E. Bodian, M.D.
[HOME ADDRESS DELETED
UNDER 2.790]

Dear Dr. Bodian:

SUBJECT: CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

On June 24, 1993, the NRC sent you a Demand for Information (DFI) based on several apparent violations of NRC requirements including (1) administration of doses to patients without first checking the dose in a dose calibrator, and (2) making false statements to the NRC during an NRC inspection at your facility on April 6, 1992, and subsequent telephone conversation on April 7, 1992 with NRC staff. The DFI required, in part, that you provide the reasons why, in light of the apparent violations described therein, the NRC should not issue an Order that precludes you from any involvement in NRC licensed activities in the future.

In your sworn response dated July 20, 1993, to the DFI, you: (1) stated that on infrequent occasions, a precalibrated dose of radioiodine was administered without prior use of a dose calibrator; (2) reiterated a previous request that your license be terminated; and (3) pointed out that you have never used the Englewood Hospital's license on a personal basis and any administration of radiopharmaceuticals to your patients at the Englewood Hospital was done under the supervision of the hospital radiology department.

Based on a NRC Office of Investigation report issued on July 26, 1993, the NRC Staff has determined that you deliberately failed to measure doses before administration to patients, and deliberately provided inaccurate information to the NRC during the April 6, 1992 inspection and the April 7, 1992 telephone conversation. A copy of the synopsis of the investigation is enclosed.

Although the NRC issued amendment No. 07 on September 27, 1993, terminating your license, in telephone conversations between Dr. Ronald R. Bellamy of the NRC Region I office and yourself on July 18, 19, and 20, 1994, you agreed to the issuance of an Order that would confirm that you would not participate in activities licensed by the NRC at any facility for a period of five years, and would notify the NRC the first time (if any) you engage in licensed activities after the five year prohibition expires. The enclosed Confirmatory Order (Effective Immediately) confirms these commitments.

Question concerning the Order may be addressed to Ms. Patricia Santiago, Assistant Director for Materials, Office of Enforcement, at telephone number (301) 504-3055.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC's Public Document Room.

Sincerely,


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Enclosures:

1. Confirmatory Order (Effective Immediately)
2. OI Report Synopsis

cc w/encls:

Public Document Room (PDR)
Nuclear Safety Information Center (NSIC)
State of New Jersey
Englewood Hospital

SYNOPSIS

On May 22, 1992, the Office of Investigations (OI), U.S. Nuclear Regulatory Commission (NRC), Field Office Region I, initiated an investigation to determine if the licensee intentionally violated NRC regulations by providing inaccurate and/or false information to NRC staff during an April 6, 1992, inspection, and April 7, 1992, telephone conversation. Specifically, the information concerned the licensee having doses of iodine-131 (I-131) assayed by a technologist at Englewood Hospital (EH) prior to the administration of the I-131 to patients.

Based on the evidence, OI concludes that the licensee deliberately failed to measure the activity of each radiopharmaceutical dose before medical use. In addition, the licensee deliberately provided inaccurate and/or false information to NRC staff during the April 6, 1992, inspection and April 7, 1992, telephone conversation.

OI also concludes that the licensee deliberately failed to conduct annual survey meter calibrations.

There is insufficient evidence to conclude that the licensee deliberately failed to possess a dose calibrator for the measurement of patient doses. There is also insufficient evidence to conclude that the licensee deliberately failed to possess appropriate radiation detection and radiation measurement survey instrumentation.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

JEROME E. BODIAN M.D.
Englewood, New Jersey

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Docket No. 030-02551
License No. 29-12417-01
IA 94-023

CONFIRMATORY ORDER (EFFECTIVE IMMEDIATELY)

I

Jerome E. Bodian (Licensee or Jr. Bodian) was the holder of NRC License No. 29-12417-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35 on September 11, 1967 and last renewed in its entirety on August 20, 1990. The License authorized the Licensee to possess and use iodine-131 as iodide for uptake studies, thyroid imaging, and the treatment of hypothyroidism and cardiac dysfunction. The License was due to expire on August 30, 1995; however on January 25, 1993, the Licensee requested that the License be terminated. The NRC granted this request for termination, and Amendment No. 07 was issued to the Licensee on September 27, 1993, terminating the License.

II

On April 6, 1992, an NRC inspection was conducted at the Licensee's facility in Englewood, New Jersey. During the inspection, the NRC identified several violations of NRC requirements, including the failure to possess and use a dose calibrator to assay therapeutic doses of iodine-131 prior to administration to patients. Also during the inspection, Dr. Bodian told the inspector that he took doses of iodine-131 to Englewood Hospital for calibration. During a telephone conversation with Region I staff on April 7, 1992, Dr. Bodian stated that. (1) although he did not possess a dose

calibrator, he had a technologist at Englewood Hospital perform the dose measurements for almost all patients he had treated; (2) all measurements of doses were within ± 10 percent of the prescribed dose; and (3) the results of these measurements were recorded in the patient charts.

Shortly after the inspection, the NRC issued a Confirmatory Action Letter to the Licensee on April 9, 1992, which confirmed, in part, the Licensee's agreement to terminate patient treatments with any radiopharmaceutical authorized by the NRC until such time as the Licensee established, and submitted to the NRC for approval, a program that included all of the required equipment and procedures required by 10 CFR Part 35. Such a program was not established and patient treatment has not resumed. The NRC Office of Investigations initiated an investigation on May 22, 1992. Dr. Bodian requested, in a letter dated January 25, 1993, that the License be terminated.

In view of Dr. Bodian's willful failure to adhere to NRC requirements, as well as the apparently willful failure to provide complete and accurate information to the NRC, thereby endangering patients to whom the doses were administered, the NRC needed certain information to determine whether there existed reasonable assurance that Dr. Bodian's activities conducted under other NRC licenses would be performed safely and in accordance with requirements. Accordingly, a Demand for Information (DFI) was issued to Dr. Bodian on June 24, 1993, that requested him to list all NRC licenses on which he was then listed as an authorized user, and to explain why the NRC should not issue an order to preclude him from any involvement in licensed activities in the future.

On July 20, 1993, Dr. Bodian responded to the Demand for Information stating that (1) on infrequent occasions a precalibrated dose of radioiodine was administered without prior use of dose calibrator; (2) a request for termination of his license (No. 29-12417-01) was made on January 25, 1993; and (3) his listing (as an authorized user) on the Englewood Hospital license (No. 29-08519-01) was a carry over from years ago, and that any administration of radiopharmaceuticals to his patients at Englewood Hospital was done under the supervision of the hospital radiology department.

The NRC OI report issued July 26, 1993 determined that notwithstanding Dr. Bodian's statements to the NRC, the doses, with a few exceptions, were not assayed with a dose calibrator prior to administration, even though Dr. Bodian was aware that such assays were required. This finding is based on the fact that although the Licensee's records indicate that 30 iodine-131 doses were provided to patients between January 1990 and April 1992, the NRC has found that most doses were not assayed for the Licensee in the Hospital's dose calibrator during that time. This willful failure to adhere to this requirement, as well as the willful false statements to the NRC during the inspection on April 6, 1992 and the April 7, 1992 telephone conversation, constitute violations of 10 CFR 35.53, 10 CFR 30.9, and 10 CFR 30.10.

III

Based on the above, it appears that Dr. Bodian, the Licensee, engaged in deliberate misconduct that constitutes a violation of 10 CFR 30.10(a)(1) and that has caused the Licensee to be in violation of 10 CFR 35.53. It further

appears that Dr. Bodian deliberately provided to NRC inspectors information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.09 and 10 CFR 30.10(a)(2). Dr. Bodian has demonstrated an unwillingness to comply with Commission requirements. NRC must be able to rely on its licensees to comply with NRC requirements, including the requirement to provide complete and accurate information. Willful violations are of particular concern to the Commission because they undermine the Commission's reasonable assurance that licensed activities will be conducted in accordance with NRC requirements. Dr. Bodian's actions have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. Consequently, protection of the public health, safety and interest require that Dr. Bodian be prohibited from engaging in NRC-licensed activities for a period of 5 years and to notify the NRC prior to resumption of any NRC-licensed activities at any facility after termination of the five year prohibition.

In telephone conversations on July 18, 19, and 20, 1994, with Dr. Ronald R. Bellamy of the NRC Region I office, Dr. Bodian agreed not to be involved in any NRC-licensed activities for a period of five years, and to notify the NRC prior to resumption of any licensed activities at any facility after that five year prohibition. I find that the Dr. Bodian's commitments as set forth in that conversation are acceptable and necessary and conclude that with these commitments the protection of the public health and safety is reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Dr. Bodian's commitments in the telephone

conversations of July 18, 19, and 20, 1994 be confirmed by this Order. Dr. Bodian has agreed to this action. Pursuant to 10 CFR 2.202, I have also determined that the significance of the violations described above is such that the public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30 and 35, IT IS HEREBY ORDERED THAT:

1. For a period of five years from the date of this Confirmatory Order, Jerome E. Bodian, M.D., shall not engage in any NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. When, for the first time, Dr. Bodian is employed in NRC-licensed activities following the five year prohibition, he shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, within 20 days prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC

jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon a showing by Dr. Bodian of good cause.

V

Any person adversely affected by this Confirmatory Order (Effective Immediately), other than Dr. Bodian, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Dr. Bodian. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

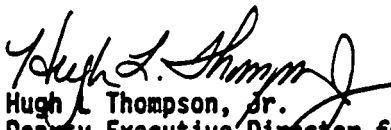
If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any

hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order (Effective Immediately) should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person adversely affected by this Order, other than Dr. Bodian, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Dated at Rockville, Maryland
this 8th day of September 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 23, 1996

IA 96-009

Mr. Eugene Bolton
[HOME ADDRESS DELETED
UNDER 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Bolton:

The enclosed Order is being issued as a result of an NRC investigation by the Office of Investigations (OI) which in part, concluded the following: 1) you knowingly maintained and substituted a cold urine sample at the time you were required to submit to a Fitness-For-Duty (FFD) test, and that you knew your actions were in violation of procedures when you submitted the surrogate sample; and 2) you admitted to being successful in providing surrogate samples in the past.

Subsequent to the OI investigation, on October 6, 1995, a Demand for Information (DFI) was issued to you based on the OI findings. A copy of the synopsis of the investigation was enclosed. The DFI requested that you: (1) identify whether you currently are employed by a company subject to NRC regulation, and if so, describe in what capacity; and (2) describe why the NRC should have confidence that you will meet NRC requirements to provide complete and accurate information to the NRC and its licensees in the future. As of this date you have not responded.

The DFI further stated that if no answer was filed, the Commission may institute a proceeding pursuant to 10 CFR 2.202 or take some other actions as may be necessary to insure compliance with regulatory requirements and that if you did not respond as specified, the NRC would proceed on the basis of available information. Therefore, the NRC has determined, based on the available information and to insure compliance with regulatory requirements, that the enclosed Immediately Effective Order prohibiting your involvement in NRC-licensed activities is appropriate. The Order states the following: you are prohibited for five years from March 9, 1993, the date your unescorted access was terminated by New York Power Authority (NYPA), from seeking unescorted access to facilities licensed by the NRC.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, or attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section.

Mr. Eugene Bolton

- 2 -

A copy of this letter and its enclosures are being sent to Mr. Leslie M. Hill, Jr., Site Executive Officer, NYPA, Indian Point 3. The NYPA is not required to provide a response to the Order, but may do so if it desires within 30 days under oath or affirmation.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR).

Sincerely,



James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Docket No. 50-286
License No. DPR-64

Enclosure:
Immediately Effective Order

cc w/encls:
L. Hill, Site Executive Officer

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Mr. Eugene Bolton

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IA 96-009

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Eugene Bolton (Mr. Bolton) was employed as a Senior Nuclear Production Technician at the New York Power Authority (NYPA) (Licensee). Licensee is the holder of License No. DPR-64 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The license authorizes the operation of Indian Point 3 (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Buchanan, New York.

II

On March 10, 1993, the NRC, Region I, received information from NYPA that Mr. Bolton had attempted to substitute a "cold" [surrogate] urine sample during random Fitness-for-Duty (FFD) testing required by NRC regulations, that a subsequent witnessed sample provided by Mr. Bolton had tested positive for marijuana, that Mr. Bolton had been referred to the Employee Assistance Program, and his authorization for access to the Indian Point 3 facility had been suspended. In response to this information, NRC initiated an investigation by the Office of Investigations (OI) of this matter. The investigation established that:

1. When called for a FFD test on March 9, 1993, Mr. Bolton knowingly submitted a surrogate urine sample which he had collected on a previous date and maintained for that purpose.
2. Mr. Bolton admitted that he provided surrogate urine samples in the past when selected for FFD testing in order to avoid detection of the presence of illegal substances.

On October 6, 1995, a Demand for Information (DFI) was issued to Mr. Bolton based on the findings of the OI investigation. The DFI indicated that Mr. Bolton had engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2), in that he provided to the facility licensee information which he knew to be inaccurate in some respect material to the NRC. Mr. Bolton's actions also constituted a violation of 10 CFR 50.5(a)(1) in that he deliberately provided a urine sample that he knew to be inaccurate and which, but for detection, would have caused the Licensee to be in violation of 10 CFR 50.9, "Completeness and accuracy of information."

The DFI requested that Mr. Bolton provide a response, within 30 days from the date of the DFI, that would: (A) Identify whether he currently is employed by any company subject to NRC regulation, and if so, describe in what capacity; and (B) Describe why the NRC should have confidence that Mr. Bolton will meet NRC requirements to provide complete and accurate information to the NRC and its licensees in the future.

The DFI further stated that, if Mr. Bolton did not respond as specified, the NRC would proceed on the basis of available information and could take other actions as necessary to ensure compliance with regulatory requirements. Although a response to the DFI was due on November 6, 1995, as of the date of this Order, Mr. Bolton has not responded.

III

Based on the above, it appears that Mr. Bolton, an employee of the Licensee at the time of the incident, engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2), in that he submitted to the Licensee information which he knew to be inaccurate in some respect material to the NRC, and 10 CFR 50.5(a)(1), in that he deliberately provided a urine sample that he knew to be inaccurate and which, but for detection, would have caused the facility licensee to be in violation of 10 CFR 50.9.

The NRC must be able to rely on its Licensees and their employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Bolton's actions in using illegal drugs and attempting to circumvent FFD requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC and its Licensees. Although a DFI was issued on October 6, 1995, which provided Mr. Bolton an opportunity to describe why the NRC should have

confidence that he will meet NRC requirements to provide complete and accurate information to the NRC and its Licensees in the future, Mr. Bolton has not responded to the DFI.

Consequently, I lack the requisite reasonable assurance that: (1) Mr. Bolton will conduct any NRC-licensed activities in compliance with the Commission's requirements; and (2) that the health and safety of the public will be protected with Mr. Bolton granted unescorted access to NRC- licensed facilities at this time. Therefore, I find that the public health, safety, and interest require that Mr. Bolton be prohibited from seeking unescorted access to NRC-licensed facilities for five years from the date of his termination of unescorted access by NYPA on March 9, 1993. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 50.5, **IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:**

Mr. Bolton is prohibited for five years from the date of his termination of unescorted access by NYPA on March 9, 1993, from seeking unescorted access to facilities licensed by the NRC.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Bolton of good cause.

V

In accordance with 10 CFR 2.202, Mr. Bolton must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Bolton or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Bolton if the answer or hearing request is by a person other than Mr. Bolton. If a person other than Mr. Bolton requests a hearing, that person shall set forth

with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Bolton or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Bolton, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations, and Research

Dated at Rockville, Maryland
this 23rd day of February 1996



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

JUL 14 1994

IA 94-015

Mr. John W. Boomer
ADDRESS DELETED

Dear Mr. Boomer:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order Prohibiting Involvement In NRC-Licensed Activities (Effective Immediately) is being issued as a consequence of your deliberate violation of 10 CFR 35.70(e) and 10 CFR 30.10 while President of Chesapeake Imaging Center, Chesapeake, West Virginia. Based on an investigation conducted by the NRC's Office of Investigations (OI), the NRC staff has determined that you deliberately violated NRC requirements by failing to conduct weekly surveys for removable contamination. After being advised by your staff of the regulatory requirement and the fact that instrumentation was not available to perform the required survey, you failed to provide the required instrumentation and permitted licensed activities to continue. A copy of the synopsis of the OI investigation was provided to you by letter dated December 2, 1993, and again by letter dated February 28, 1994. An enforcement conference by telephone was held with you on March 8, 1994. The summary of this conference was sent to you on March 16, 1994.

Such conduct is unacceptable to the NRC. Therefore, after consultation with the Commission, I have been authorized to issue the enclosed Order Prohibiting Involvement In NRC-Licensed Activities (Effective Immediately). Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter with your address deleted and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Enclosure: Order Prohibiting Involvement In NRC-Licensed Activities
(Effective Immediately)

cc w/enclosure
Public Document Room

State of West Virginia, Director
Department of Public Health
State of California, Director
Department of Public Health
All States

Chesapeake Imaging Center, Inc.
11940 MacCorkle Avenue
Chesapeake, West Virginia 25315

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

John W. Boomer
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IA 94-015

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

John W. Boomer has been a nuclear medicine technologist since 1972. On February 11, 1993, Mr. Boomer, as the President of Chesapeake Imaging Center, Inc. (CIC or Licensee) applied for an NRC license. On March 23, 1993 Materials License No. 47-25238-01 was issued to CIC by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorized the possession and use of radiopharmaceuticals for nuclear medicine activities in accordance with the conditions specified therein. The license was terminated this date.

II

On July 30, 1993, the NRC conducted an initial inspection of CIC at its facility located in Chesapeake, West Virginia. As a result of the inspection, multiple violations of NRC requirements were identified. One specific violation identified involved the failure to perform weekly surveys for removable contamination in the nuclear medicine department between March 24 and July 30, 1993. As a result of this inspection, a Notice of Violation is being issued contemporaneously with this Order.

Between August 3 and September 30, 1993, an investigation was conducted by the NRC Office of Investigations (OI) to determine if certain violations identified during the July 30, 1993, inspection were the result of deliberate misconduct. Based on investigative findings, the NRC staff concludes that Mr. Boomer deliberately caused CIC to violate the requirement to perform the weekly contamination surveys, after being advised by the CIC facility Manager and CIC technical consultant that such surveys were required. Mr. Boomer was aware of the NRC requirement to perform weekly contamination surveys, yet deliberately failed to meet the requirement in violation of 10 CFR 35.70(e) and 10 CFR 30.10.

A transcribed telephone enforcement conference between the NRC staff and Mr. Boomer was held on March 8, 1994. Mr. Boomer indicated during the enforcement conference that he had significant difficulties in obtaining the funds from investors and did not recognize the severity of the noncompliance but rather focused on the needs of patients traveling miles to obtain the studies. Mr. Boomer also stated during the enforcement conference that he did accept responsibility for not obtaining the equipment in a more timely fashion and for not notifying NRC and indicated that he would exercise better judgment in the future. From the discussions at the enforcement conference, the staff believes an order to remove Mr. Boomer from involvement in NRC-licensed activities is warranted based on (1) the deliberate noncompliance with the NRC's weekly survey requirement, (2) the fundamental lack of assurance that he will in the future comply with Commission requirements, (3) his position as President, (4) his approximate 20 years experience in NRC-licensed activities,

and (5) his decision to continue operations although he knew he was not in compliance with the weekly survey requirement.

III

Based on the above, Mr. Boomer engaged in deliberate misconduct which caused the licensee to be in violation of 10 CFR 35.70(e). The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to perform weekly contamination surveys. Compliance with the NRC requirement to perform weekly contamination surveys is necessary to protect members of the public as well as Licensee employees from unnecessary radiation exposure that could result from undetected radioactive contamination. Performance of weekly contamination surveys is an important safety requirement intended to prevent radioactive contamination of patients, employees and other members of the public. Mr. Boomer's deliberate actions in causing the Licensee to violate these requirements have raised serious doubts as to whether he can be relied on to be involved in NRC-licensed activities.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Boomer were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Boomer be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such

activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer. During this period Mr. Boomer also shall be required to provide a copy of this Order to any prospective employer who engages in NRC-licensed activities prior to the time that Mr. Boomer accepts employment with such prospective employer. The purpose of this notice is so that any prospective employer is aware of Mr. Boomer's prohibition from engaging in NRC-licensed activities. Additionally, Mr. Boomer is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Boomer's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Mr. John W. Boomer is prohibited for three years from the date of this Order from any involvement in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of three years from the date of this Order, Mr. John W. Boomer shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as defined in 1 above) prior to his acceptance of employment with such prospective employer. The purpose of this requirement is to ensure that the employer is aware of Mr. Boomer's prohibition from engaging in NRC-licensed activities.
3. The first time Mr. Boomer is employed in NRC-licensed activities following the three year prohibition, he shall notify the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323, at least five days prior to the performance of licensed activities or his being employed to perform NRC-licensed activities (as described in 1 above). The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed.
4. If Mr. Boomer is currently involved in NRC-licensed activities at an employer or entity, Mr. Boomer shall, in accordance with Paragraph 1 above, immediately cease such activities and provide notice within 20 days of the date of this Order to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555 of the name, address and telephone number of the employer or entity where the licensed activities are being conducted. Further, Mr. Boomer shall provide a copy of this Order to his employer if his employer is engaged in NRC-licensed activities.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon a showing by Mr. Boomer of good cause.

V

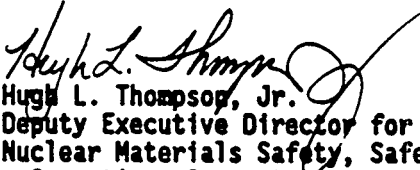
In accordance with 10 CFR 2.202, Mr. Boomer must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Boomer or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555; to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Mr. Boomer if the answer or hearing request is by a person other than Mr. Boomer. If a person other than Mr. Boomer requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Boomer or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Boomer, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further Order or processing. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards and
Operations Support

Dated at Rockville, Maryland
this 14th day of July 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 13, 1997

IA 96-101

Mr. Joseph R. Bynum
[HOME ADDRESS DELETED
UNDER 10 CFR 2.290]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVELY IMMEDIATELY)

Dear Mr. Bynum:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate misconduct, in violation of 10 CFR 50.5 of the Commission's regulations. Specifically, in April of 1993, while performing duties and responsibilities as the Vice President of Nuclear Operations for the Tennessee Valley Authority, you discriminated against Mr. William F. Jocher for engaging in protected activities, contrary to the requirements of Section 211 of the Energy Reorganization Act, as amended, and 10 CFR 50.7, Employee Protection. Based on your deliberate actions, the attached Order prohibits your involvement in NRC-licensed activities for a period of five years. However, because of your transfer from TVA-Nuclear in April 1993, the Order is retroactive to May 1, 1993, and will be effective until April 30, 1998.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room (PDR).

Sincerely,

Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations, and Enforcement

Enclosure: Order Prohibiting Involvement
in NRC Licensed Activities (Effectively Immediately)

cc w/encl: (Next Page)

Mr. Joseph R. Bynum

- 2 -

cc w/enc1 [HOME ADDRESS DELETED]:
Tennessee Valley Authority
ATTN: Mr. Oliver D. Kingsley, Jr.
President, TVA Nuclear and
Chief Nuclear Officer
6A Lookout Place
1101 Market Street
Chattanooga, TN 37402-2801

Mr. William F. Jocher
133 Gholdston Drive
Dayton, TN 37321

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
JOSEPH R. BYNUM

)
)
)
)

IA 96-101

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Since April 1993, Joseph R. Bynum has held the position of Vice President, Fossil Operations in the Fossil and Hydro Power organization of the Tennessee Valley Authority (TVA or Licensee). At the time of the events described in this Order, Mr. Bynum was employed as Vice President, Nuclear Operations, in the Licensee's corporate organization and was responsible for the oversight of TVA's nuclear program at its four nuclear reactor sites. During this time, the Licensee held five operating licenses and four construction permits issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. License Nos. DPR-77 and DPR-79 authorized the Licensee's operation of the Sequoyah Nuclear Plant in Soddy-Daisy, Tennessee; License Nos. DPR-33, DPR-52, and DPR-68 authorized operation of the Browns Ferry Nuclear Plant in Athens, Alabama; Construction Permit Nos. CPPR-91 (now Operating License NPF-90) and CPPR-92 authorized the construction of the Watts Bar Nuclear Plant in Spring City, Tennessee; and Construction Permit Nos. CPPR-122 and CPPR-123 authorized the construction of the Bellefonte Nuclear Plant in Scottsboro, Alabama.

II

Following receipt of information regarding alleged discrimination against Mr. William F. Jocher, former Manager, Chemistry and Environmental Protection in TVA's corporate organization, the NRC Office of Investigations (OI) initiated an investigation, Case No. 2-93-015, on April 15, 1993. OI completed its investigation on August 31, 1995, and concluded that:

(1) Mr. Jocher "was engaged in protected activities during his employment at TVA, and received an adverse employment action in the form of a threat of termination by TVA if he did not resign"; (2) "the reason proffered by TVA for this adverse action, namely that Jocher's performance in the area of management skills was inadequate, was primarily pretextual"; and (3) "despite denials by the TVA managers involved, the methodology of Jocher's engagement in protected activity was the primary reason for the adverse action" against him.

In addition, on June 29, 1993, Mr. Jocher, filed a complaint with the U. S. Department of Labor (DOL). In his DOL complaint, Mr. Jocher alleged that he was forced to resign from employment with TVA as a result of carrying out activities protected by the Atomic Energy Act of 1954. He further stated that his forced resignation was based on his activities in revealing deficiencies in the plant chemistry programs at the Sequoyah Nuclear Plant, revealing TVA's non-compliance with NRC approved guidelines, and revealing inconsistencies between actual facts and TVA management's reports to the NRC and other TVA oversight groups.

DOL efforts to conciliate the matter between Mr. Jocher and TVA were unsuccessful, and on April 29, 1994, the DOL District Director (DD) issued the initial finding of the DOL compliance action in the case. The DOL DD concluded that Mr. Jocher was a protected employee engaged in protected activity within the scope of the Energy Reorganization Act, and that discrimination, as defined and prohibited by the statute, was a factor in the actions which comprised his complaint.

Following an appeal by TVA, administrative hearings were conducted before the DOL Administrative Law Judge (ALJ). On July 31, 1996, the DOL ALJ issued a Recommended Decision and Order (RDO) in the case (DOL Case No. 94-ERA-24) finding that TVA discriminated against Mr. Jocher in violation of Section 211 of the Energy Reorganization Act. On November 20, 1996, the ALJ issued a Recommended Order of Dismissal, based on a conciliation agreement between Mr. Jocher and TVA, and on November 22, 1996, the DOL Administrative Review Board issued a Final Order Approving Settlement and Dismissing Complaint.

Both the ALJ and OI stated that Mr. Joseph R. Bynum, the former Vice President of Nuclear Operations of TVA, ordered the forced resignation of Mr. Jocher. By letter dated August 26, 1996, Mr. Bynum was informed of the DOL findings and the OI investigation results and requested to attend a predecisional enforcement conference. On September 23, 1996, a closed, transcribed conference was conducted with Mr. Bynum, legal counsel, and management representatives of TVA. During the conference and in a written statement provided to NRC Region II prior to the conference, Mr. Bynum vigorously denied any violation of 10 CFR 50.5, Deliberate Misconduct, and stated that he did

not discriminate against Mr. Jocher for engaging in protected activities. He attributed his decision to ask for Mr. Jocher's resignation to Mr. Jocher's poor management skills, and stated that he (Mr. Bynum) used poor judgement in not coordinating the personnel action with the appropriate TVA offices (i.e., Human Resources, Office of General Counsel). Mr. Bynum provided a detailed description of the events and circumstances surrounding Mr. Jocher's departure and addressed specific conclusions drawn by the DOL ALJ.

Based on the NRC staff's review of the evidence gathered by OI, the ALJ decision, and the views presented by Mr. Bynum at the predecisional enforcement conference, the NRC staff is satisfied that discrimination against Mr. Jocher by Mr. Bynum, who is currently the TVA Vice President for Fossil Operations, as described in the ALJ RDO and the OI Report, had occurred when Mr. Bynum ordered the forced resignation of Mr. Jocher. In reaching this determination the staff considered among other things: (1) the close timing between some of the protected activities in March 1993, i.e., formal notification by the NRC that it would be investigating the safety issues raised by Mr. Jocher, and the adverse action taken against Mr. Jocher on April 5, 1993; (2) statements made by TVA managers that Mr. Bynum ordered the forced resignation of Mr. Jocher; (3) inconsistent statements made by Mr. Bynum and the two managers who carried out the forced resignation of Mr. Jocher with respect to why and how the employment decision was made, and whether Mr. Jocher was placed in a six month improvement program in March, 1993; (4) inconsistencies in the various statements given by Mr. Bynum regarding his knowledge of Mr. Jocher's protected activities, most notably the post-polygraph interview where he stated that he was aware that Mr. Jocher had

submitted several safety complaints and Significant Corrective Action Reports, in light of TVA's processes for handling safety issues of which Mr. Bynum should have been fully cognizant; (5) the results of Mr. Bynum's voluntary polygraph examination which indicated deception with respect to key questions related to the termination of Mr. Jocher; and (6) the lack of adequate documentation by TVA as to Mr. Jocher's inadequacies as a TVA manager.

The staff adopts, in essence, the conclusions reached by OI and the DOL ALJ and believes that Mr. Jocher would not have been forced to resign on April 5, 1993 but for his engaging in protected activities. Therefore, it is concluded that, on April 5, 1993, Mr. Bynum's deliberate actions against Mr. Jocher were in violation of Section 211 of the Energy Reorganization Act and 10 CFR 50.5, Deliberate Misconduct. Further, Mr. Bynum's actions caused TVA to be in violation of 10 CFR 50.7, Employee Protection.

III

Based on the above, the staff concludes that Mr. Joseph R. Bynum, an employee of the Licensee, has engaged in deliberate misconduct in violation of 10 CFR 50.5 that has caused the Licensee to be in violation of 10 CFR 50.7. NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement that prohibits discrimination against employees for engaging in protected activities. Joseph R. Bynum's actions in causing the Licensee to violate 10 CFR 50.7 have raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Joseph R. Bynum were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Joseph R. Bynum be prohibited from any involvement in NRC-licensed activities for a period of five years retroactive to May 1, 1993, the date in which he was transferred out of the Licensee's nuclear organization. If Mr. Bynum is currently involved in or overseeing NRC-licensed activities at TVA or any other licensee of the NRC, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer. Additionally, Joseph R. Bynum is required to notify the NRC of his first involvement in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Bynum's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

- A. For a period of five years from May 1, 1993, Joseph R. Bynum is prohibited from engaging in, or exercising control over individuals

engaged in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to:

(1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

- B. Following the five-year period of prohibition in Section IV.A above, at least five days prior to the first time that Joseph R. Bynum engages in, or exercises control over, NRC-licensed activities, he shall notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement that Joseph R. Bynum is committed to compliance with NRC requirements and the reasons why the Commission should have confidence that he will comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Bynum of good cause.

In accordance with 10 CFR 2.202, Joseph R. Bynum must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Joseph R. Bynum or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, Suite 2900, Atlanta, GA 30323, and to Joseph R. Bynum if the answer or hearing request is by a person other than Joseph R. Bynum. If a person other than Joseph R. Bynum requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Joseph R. Bynum or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Joseph R. Bynum, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations, and Enforcement

Dated at Rockville, Maryland
this 13th day of January 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 4, 1993

IA 93-001

Mr. Richard J. Gardecki
(Address)

Dear Sir:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN CERTAIN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of 10 CFR 40.10 of the Commission's regulations as described in the Order.

Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,


Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety,
Safeguards and Operations
Support

Enclosure: As stated

cc: Allied-Signal, Inc.
All Agreement States
SECY

developed in that inspection, an investigation was conducted in November and December 1992 by the Office of Investigations (OI). The inspection and investigation revealed that Mr. Gardecki intermittently took courses at the University of Delaware between 1962 and 1967 and in 1978, but did not accumulate sufficient credits to earn a bachelor's degree. While employed at the University of Delaware between 1977 and 1981, Mr. Gardecki prepared a transcript that falsely reflected sufficient hours of credit at that University to entitle him to a Bachelor of Science degree.

Mr. Gardecki subsequently used the false transcript to obtain employment at the University of Nebraska in about 1983, at Westinghouse Radiological Services Division in about 1985, at Environmental Testing Inc., in 1988, and at the Licensee in about June 1991. In each of these positions, Mr. Gardecki was involved in activities licensed by the NRC or an Agreement State, pursuant to an agreement with the NRC under section 274 of the Atomic Energy Act of 1954, as amended.

In addition, Mr. Gardecki obtained employment as a Radiation Specialist at the NRC in 1987 by submitting a Standard Form 171 (SF171), Application for Federal Employment, which contained the same false information regarding a bachelor's degree at the University of Delaware. He was allowed to resign his NRC employment following identification of the falsehood. Also,

during the OI investigation, he admitted that he had provided false information to the NRC regarding prior employment by General Dynamics in Denver, Colorado.

Further, in a transcribed sworn statement on December 1, 1992, Mr. Gardecki deliberately provided false information to OI investigators when he stated that he graduated from the University of Delaware in 1961. When asked about the University records indicating that he had not received a degree, Mr. Gardecki fabricated a story about the University having mixed his record with that of his brother. He also deliberately provided false information as to the accuracy of a University of Delaware transcript that he had submitted to the Licensee. In a transcribed, sworn statement to OI investigators on December 14, 1992, Mr. Gardecki admitted that he had provided false information in his sworn statements previously given to OI investigators on December 1, 1992 concerning his academic record and applications for employment.

III

Based on the above, Mr. Gardecki engaged in deliberate misconduct, which through his employment (from about June 1991 through December 1992) in a position with educational requirements that Mr. Gardecki did not meet, caused the Licensee to be in violation of the organization and qualifications

requirements of License Condition No. 9. This is a violation of 10 CFR 40.10. Mr. Gardecki also deliberately provided to NRC investigators information that he knew to be inaccurate and was in some respects material to the NRC which also constitutes a violation of 10 CFR 40.10. As an Assistant Health Physicist for the Licensee, Mr. Gardecki was responsible for performance of required surveys and keeping of required records, all of which provide evidence of compliance with Commission requirements. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Gardecki's deliberate actions in causing this Licensee to be in violation of License Condition No. 9, a violation of 10 CFR 40.10, and his violation of 10 CFR 40.10 caused by his deliberate misrepresentations to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC or to an employer. Mr. Gardecki's misconduct (repeated on several occasions over several years with several employers) caused this Licensee to violate a Commission requirement; and his false statements to Commission officials demonstrate conduct that cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities in NRC jurisdiction can be conducted in

compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Gardecki were permitted at this time to be named as a Radiation Safety Officer (RSO) on an NRC license or permitted to supervise licensed activities (i.e., being responsible in any respect for any individual's performance of any licensed activities) for an NRC licensee or an Agreement State licensee while conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20.

Therefore, the public health, safety and interest require that Mr. Gardecki be prohibited from being named on an NRC license as an RSO or from supervising licensed activities (i.e., being responsible in any respect for any individual's performance of any licensed activities) for an NRC licensee or an Agreement State licensee while conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20 for a period of five years from the date of this Order. In addition, for the same period, Mr. Gardecki is required to give notice of the existence of this Order to a prospective employer engaged in licensed activities, described below (Section IV, paragraph 2), to assure that such employer is aware of Mr. Gardecki's previous history. Mr. Gardecki is also required to notify the NRC of his employment by any person engaged in licensed activities, described below (Section IV, paragraph 2), so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the

public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 61, 81, 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 40.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Richard J. Gardecki is prohibited for five years from the date of this Order from being named on an NRC license as a Radiation Safety Officer or from supervising licensed activities (i.e., being responsible in any respect for any individual's performance of any licensed activities) for an NRC licensee or an agreement state licensee while conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20.
2. Should Richard J. Gardecki seek employment with any person engaged in licensed activities during the five year period from the date of this Order, Mr. Gardecki shall provide a copy of this Order to such person at the time Mr. Gardecki is soliciting or negotiating employment so that the person is aware of the Order prior to making an employment decision. For the

purposes of this paragraph licensed activities include licensed activities of 1) an NRC licensee, 2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20, and 3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.

3. For a five year period from the date of this Order, Richard J. Gardecki shall provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer, within 72 hours of his acceptance of an employment offer, involving licensed activities described in paragraph 2, above.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Gardecki of good cause.

V

In accordance with 10 CFR 2.202, Richard J. Gardecki must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the

answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Richard J. Gardecki or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 799 Roosevelt Rd., Glen Ellyn, IL 60137, and to Richard J. Gardecki, if the answer or hearing request is by a person other than Richard J. Gardecki. If a person other than Richard J. Gardecki requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Richard J. Gardecki or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Richard J. Gardecki, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety,
Safeguards and Operations Support

Dated at Rockville, Maryland
this 4th day of May 1993



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 19, 1996

IA 96-020

Mr. Juan Guzman
HOME ADDRESS DELETED
UNDER 2.790

SUBJECT: ORDER PROHIBITING UNESCORTED ACCESS OR INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)

Dear Mr. Guzman:

The enclosed Order is being issued to you as a result of an NRC investigation by the Office of Investigations (OI) which, in part, concluded that you intentionally made false statements in your application for a security clearance at the Calvert Cliffs Nuclear Power Plant, and deliberately submitted false information to Baltimore Gas & Electric Company (BG&E). As noted in the Demand for Information that the NRC issued to you on January 2, 1996, BG&E revoked your unescorted access authorization for the Calvert Cliffs facility, and you were denied unescorted access to the protected area in October 1994 after BG&E became aware, through an investigation by the Immigration and Naturalization Service and State Department, that you were an illegal alien who had received a passport under another name.

Your unescorted access to the plant initially had been granted by BG&E on February 23, 1993, based, in part, on your submittal of a "green card" and social security card during the initial interview process, both of which were represented as authentic when, in fact, they were not. In addition, when questioned by the licensee regarding an arrest record revealed during FBI fingerprint checks, you repeatedly denied that the arrest record belonged to you. Your falsification of NRC-required background information, as well as your subsequent denials to the licensee, constitute a significant regulatory concern.

The NRC regulations in 10 CFR 73.56 and 73.57 were established, in part, to provide high assurance that individuals granted unescorted access to nuclear power plants are trustworthy and reliable. Your actions in this matter did not demonstrate trustworthiness and constitute a violation of the requirements of 10 CFR 50.5, "Deliberate Misconduct," because you deliberately submitted to BG&E information you knew to be incomplete or inaccurate in some respect material to the NRC. Following your termination from employment at the Calvert Cliffs plant, the NRC sent you a Demand for Information (DFI) on January 2, 1996 which requested that you provide the NRC a response which: (1) identifies whether you currently are employed by any company subject to NRC regulation, and if so, in what capacity; (2) describes why the NRC should permit you to be involved in licensed activities in the future or have

confidence that you will comply with NRC requirements if currently employed in an NRC-regulated activity, including requirements to provide complete and accurate information; and (3) explains why the NRC should not conclude that your actions in providing false information to the licensee were done deliberately.

In your February 7, 1996 response to the DFI, you indicated that you were not currently employed by any company subject to NRC regulation; at no time were you cited for a procedure or safety violation while employed at Calvert Cliffs; and that the sole reason you did not disclose that you were an illegal alien was your fear of deportation. You also admitted that you did deliberately, but without malice or intent, deceive the licensee about your work background and experience, but did so solely out of fear of deportation; pointed out an inaccuracy in the DFI in that while you did apply for a passport under another name, you never pursued the document; requested that, if the NRC decided to prohibit you from working for an NRC licensee, consideration be given to the 15 months that had elapsed since your termination; and noted that the Immigration and Naturalization Service granted you legal resident status in the United States in January 1996.

Notwithstanding your response, the NRC has determined that to ensure compliance with regulatory requirements, the enclosed Immediately Effective Order is appropriate, to prohibit you for a period of five years from seeking unescorted access to any NRC-licensed facility and prohibit your involvement in NRC-licensed activities, for the reasons set forth in the enclosure.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section.

Please note that you are required to respond to this Order, and should follow the instructions specified in Section V of the Order when preparing your response. Failure to comply with the provisions of this Order may result in civil or criminal sanctions. Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

A copy of this letter and Order are being sent to Mr. Charles H. Cruse, Vice-President-Nuclear Energy, Calvert Cliffs. BG&E is not required to provide a response to the Order, but may do so, if it desires, within 30 days under oath or affirmation.

Mr. Juan Guzman

- 3 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room (PDR).

Sincerely,


James L. Milhoan

Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Docket Nos. 50-317; 50-318
License Nos. DPR-53; DPR-69

Enclosure: Order Prohibiting Unescorted Access
or Involvement in NRC-licensed activities
(Effective Immediately)

cc w/encl:
Charles H. Cruse
Vice President - Nuclear Energy
Baltimore Gas & Electric Company

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MR. JUAN GUZMAN

)
)
)

IA 96-020

ORDER PROHIBITING UNESCORTED ACCESS OR
INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Juan Guzman was employed as a contractor by the Baltimore Gas & Electric Company (BG&E) at the Calvert Cliffs facility (Licensee), which holds a license issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The license authorizes the operation of the Calvert Cliffs Nuclear Power Plant, Units 1 & 2 (facilities) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Lusby, Maryland.

II

In a Licensee Event Report issued by BG&E on November 16, 1994, the NRC received information from BG&E indicating that BG&E had revoked Mr. Guzman's unescorted access authorization and removed him from the protected area in October 1994 after it became aware through an investigation by the Immigration and Naturalization Service and State Department, that Mr. Guzman was an illegal alien.

Mr. Guzman's unescorted access to the site initially had been granted by BG&E on February 23, 1993 based, in part, on his submittal of a "green card" and social security card during the initial interview process, both of which were represented as authentic when, in fact, they were not. In addition, when

questioned on prior occasions by the Licensee regarding an arrest record obtained as a result of fingerprints submitted to the FBI, Mr. Guzman repeatedly denied that the arrest record belonged to him, even though it did. Mr. Guzman's falsification of background information, combined with his subsequent denials to the Licensee, constitute a significant regulatory concern.

The NRC regulations in 10 CFR 73.56 and 73.57 were established, in part, to provide high assurance that individuals granted unescorted access are trustworthy and reliable. Mr. Guzman's actions in this matter did not demonstrate that trustworthiness, and constitute a violation of the requirements of 10 CFR 50.5, "Deliberate Misconduct," because Mr. Guzman deliberately submitted to the Licensee information that he knew was incomplete or inaccurate in some respect material to the NRC.

III

Although Mr. Guzman was terminated from employment at Calvert Cliffs in October 1994, his actions in this matter raise serious concerns as to whether he can be relied upon to comply with NRC requirements. Therefore, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, in order for the Commission to determine whether further enforcement action should be taken against Mr. Guzman to ensure compliance with NRC regulatory requirements, the NRC sent him a Demand for Information (DFI) on January 2, 1996. The DFI required Mr. Guzman to provide the NRC a response that: (1) identifies whether he is

currently employed by any company subject to NRC regulation and, if so, describes in what capacity; (2) describes why the NRC should permit him to be involved in licensed activities in the future or have confidence that he will comply with NRC requirements if currently employed in an NRC-regulated activity, including requirements to provide complete and accurate information; and (3) explains why the NRC should not conclude that his actions in providing false information to the Licensee were done deliberately.

In a letter dated February 7, 1996, Mr. Guzman responded to the DFI. In that response, Mr. Guzman stated that: (1) he was not currently employed by any company subject to NRC regulation; (2) at no time was he cited for a procedure or safety violation while employed at Calvert Cliffs; and (3) the sole reason he did not disclose that he was an illegal alien was his fear of deportation. He also admitted that he did deliberately, but without malice or intent, deceive the Licensee about his work background and experience, but did so solely out of fear of deportation; pointed out an inaccuracy in the DFI in that while he did apply for a passport under another name, he never pursued the document; requested that, if the NRC decided to prohibit him from working for an NRC licensee, consideration be given to the 15 months that had elapsed since his termination; and noted that the Immigration and Naturalization Service granted him legal resident status in the United States in January 1996.

IV

Notwithstanding his motives in providing false information to the Licensee, it is clear, as Mr. Guzman admitted in his response, that he provided false information to the Licensee, and did so deliberately. In doing so, Mr. Guzman engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2), in that he deliberately submitted to the Licensee information that he knew to be inaccurate in some respect material to the NRC. Such behavior cannot be tolerated by the NRC.

The NRC must be able to rely on its licensees and their employees, including contractor employees, to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Guzman's actions in knowingly falsifying background information and his identity in an attempt to avoid discovery and gain access to the Calvert Cliffs facility, and his false statements to Licensee officials when questioned about his background and identity, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC and its licensees.

Consequently, I lack the requisite reasonable assurance that: (1) Mr. Guzman will conduct NRC-licensed activities in compliance with the Commission's requirements; and (2) the health and safety of the public will be protected if Mr. Guzman is granted unescorted access to NRC-licensed facilities at this time. Therefore, I find that the public health, safety, and interest require that Mr. Guzman be prohibited from involvement in NRC-licensed activities for

five years from the date of the termination of his unescorted access by BG&E on October 18, 1994. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 103, 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. For a five-year period from October 18, 1994, the date of the termination of his unescorted access by BG&E, Mr. Juan Guzman is prohibited from engaging in NRC-licensed activities. For the purpose of this paragraph, NRC-licensed activities include licensed activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.
- B. For a five-year period from October 18, 1994, the date of the termination of his unescorted access by BG&E, Mr. Juan Guzman is prohibited from obtaining unescorted access at a NRC-licensed facility.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Guzman of good cause.

VI

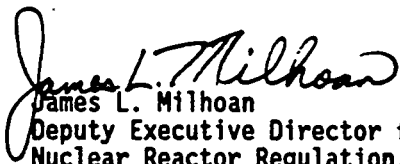
In accordance with 10 CFR 2.202, Mr. Guzman must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Guzman or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Guzman if the answer or hearing request is by a person other than Mr. Guzman. If a person other than Mr. Guzman requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Guzman or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Guzman or any other person adversely affected by this Order may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations, and Research

Dated at Rockville, Maryland
this 19th day of April 1996

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

LBP-96-20

ATOMIC SAFETY AND LICENSING BOARD

96 OCT 16 1996

Before Administrative Judges:

G. Paul Bollwerk, III, Chairman
Dr. Charles N. Kelber
Dr. David R. Schink

OFFICE OF THE
DOCKET

SERVED OCT 16 1996

In the Matter of

JUAN GUZMAN

(Order Prohibiting Unescorted
Access or Involvement in
NRC-Licensed Activities)

Docket No. IA 96-020

ASLBP No. 96-715-03-EA

October 16, 1996

MEMORANDUM AND ORDER
(Approving Settlement Agreement
and Dismissing Proceeding)

In a joint motion filed October 4, 1996, petitioners Juan and Laurene Guzman and the NRC staff ask the Licensing Board to approve an attached settlement agreement and dismiss this proceeding. Finding their settlement accord is consistent with the public interest, we approve the agreement and terminate this case.

At issue in this proceeding is an April 19, 1996 staff enforcement order issued in connection with Mr. Guzman's activities while employed as a contractor employee performing piping insulation work at Baltimore Gas and Electric Company's (BG&E) Calvert Cliffs Nuclear Power Plant, Units 1 and 2. The immediately effective order precludes Mr. Guzman for a period of five years from (1) any involvement in NRC-licensed activities; and (2) obtaining

OGC-96- 004289

unescorted access to an NRC-licensed facility. The order further provides this five-year period began on October 18, 1994, the date on which BG&E revoked Mr. Guzman's unescorted access authorization and removed him from the protected area at the Calvert Cliffs facility for purported misrepresentations regarding his immigration status at that time. As the basis for its order, the staff relies on Mr. Guzman's alleged attempts to falsify background information regarding himself, including providing a fraudulent "green card" and social security card and denying that an arrest record obtained by submitting his fingerprints to the Federal Bureau of Investigation belonged to him. See 61 Fed. Reg. 18,630, 18,630-31 (1996).

In a one-paragraph letter dated April 29, 1996, Mr. Guzman and his spouse, Laurene, requested a hearing in accordance with 10 C.F.R. § 2.202 to contest the staff's April 1996 order. In its May 31, 1996 initial prehearing order the Board sought to convene an early July 1996 prehearing conference, but subsequently granted a series of postponements to provide the Guzmans with additional time to find an attorney.¹ Their efforts to obtain counsel,

¹ Because the Guzmans appeared to be in some financial distress, see, e.g., Reply to NRC Staff Response Dated July 10, 1996 (Aug. 2, 1996) at 1, and based on our belief that in this enforcement proceeding the overall efficiency of the adjudicatory process would be materially aided if the Guzmans had counsel, the Board provided the Guzmans with information on organizations that could assist them in
(continued...)

however, ultimately were unsuccessful. Accordingly, on August 28, 1996, the Board conducted a prehearing conference during which Mr. Guzman (aided by a United States Department of State-certified Spanish interpreter²) and Mrs. Guzman appeared pro se.

At the prehearing conference, the Board heard presentations on the pending issues of the staff's challenge to Mrs. Guzman's standing and the efficacy of the staff's immediate effectiveness determination.³ See Tr. at 9-64. The Board also considered the admissibility of certain "central litigation issues" proposed by the parties. We concluded, among other things, that we would permit the enforcement order to be challenged on the ground the five-year prohibition term is excessive when compared to other, similar cases. See Tr. at 68-70; see also Radiation Oncology Center at Marlton (Marlton, New Jersey), LBP-95-25, 42 NRC 237, 238-39 (1995). We also decided we wished to

¹(...continued)
obtaining free or reduced cost legal services. See Board Memorandum and Order (Scheduling Prehearing Conference) (Aug. 12, 1996) at 3 n.2 (unpublished); Board Memorandum and Order (Second Prehearing Order) (June 21, 1996) at 4 n.1 (unpublished).

² The terms and conditions governing the use of that interpreter were specified in an attachment to an August 26, 1996 Board issuance. See Board Memorandum (Use of Spanish Interpreter) (Aug. 26, 1996) attach. 1 (unpublished); see also Tr. at 3-6.

³ Because we approve the settlement reached by the participants, we need not resolve these issues.

receive additional submissions addressing the question of permitting litigation on the Guzman-proposed issue whether Mr. Guzman's status as a Mexican immigrant was a factor affecting the severity of the imposed prohibition. See Tr. at 70-73. Finally, the Board and the participants discussed future scheduling for the proceeding, which resulted in a directive that a sixty-day discovery period would begin immediately. See Tr. at 74-83. See also Board Order (Memorializing Filing Dates and Initiation of Discovery and Requesting Settlement Status Report) (Aug. 30, 1996) at 1-2 (unpublished).

Following the August 28 prehearing conference, the Guzmans and the staff initiated settlement discussions. To permit negotiations to continue, on September 9, 1996, the Guzmans and the staff asked that we hold the proceeding, including the discovery and issue briefing schedules, in abeyance through the end of September. We granted this request, as well as a September 25, 1996 motion to continue the schedule suspension through mid-October. Thereafter, the participants filed the joint settlement motion now before us.

Under the terms of the October 4, 1996 settlement agreement, the staff agrees to modify the April 1996 enforcement order to reduce from five to three years the term of the prohibition on Mr. Guzman having any involvement in NRC-licensed activities or seeking/obtaining unescorted

access to any NRC-licensed facility. Therefore, as revised, this prohibition would be in place until October 17, 1997. In addition, the settlement agreement provides that for a subsequent two-year period (i.e., October 17, 1997, through October 16, 1999), if Mr. Guzman seeks employment with any person whose operations he knows, or reasonably should know, involve NRC-licensed or regulated activity, prior to being hired he must provide that person with a copy of the April 1996 order and the settlement agreement. In turn, the Guzmans agree to withdraw their hearing request.

Pursuant to subsections (b) and (c) of section 161 of the Atomic Energy Act of 1954, 42 U.S.C. § 2201(b), (c), and 10 C.F.R. § 2.203, we have reviewed the participants' joint settlement agreement to determine whether approval of the agreement and termination of this proceeding is in the public interest. Based on that review, and according due weight to the position of the staff, we have concluded both actions are consonant with the public interest. We thus grant the participants' joint motion to approve the settlement agreement and dismiss this proceeding

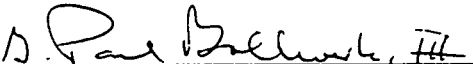
For the foregoing reasons, it is this sixteenth day of October 1996, ORDERED that:

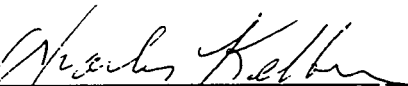
1. The October 4, 1996 joint motion of Juan and Laurene Guzman and the staff is granted and we approve their

October 4, 1996 "Joint Settlement Agreement," which is attached to and incorporated by reference in this memorandum and order.

2. This proceeding is dismissed.

THE ATOMIC SAFETY
AND LICENSING BOARD


G. Paul Bollwerk, III, Chairman
ADMINISTRATIVE JUDGE


Charles N. Kelber
ADMINISTRATIVE JUDGE


David R. Schink
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 16, 1996

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
JUAN GUZMAN	)	Docket No. IA 96-020
	)	ASLBP No. 96-715-03-EA
	)	
(Order Prohibiting Unescorted Access or	)	
Involvement in NRC-Licensed Activities)	)	

JOINT SETTLEMENT AGREEMENT

On April 19, 1996, the staff of the Nuclear Regulatory Commission (Staff) issued an Order Prohibiting Unescorted Access or Involvement in NRC-licensed Activities (Effective Immediately) to Juan Guzman. 61 Fed. Reg. 18,630. On April 29, 1996, Juan Guzman along with his spouse, Laurene Guzman, requested a hearing on the April 19, 1996 order.¹ In response to Mr. and Mrs. Guzman's hearing request, an Atomic Safety and Licensing Board was established on May 20, 1996. 61 Fed. Reg. 26,549.

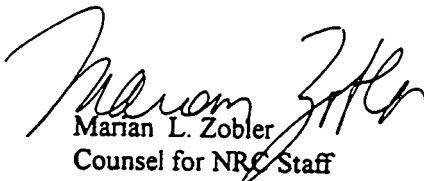
After discussions between the Staff and the Guzmans, both the Staff and the Guzmans agree that it is in their respective interests and in the public interest to settle this proceeding without further litigation, and agree to the following terms and conditions:

¹ Mrs. Guzman's right to participate in the proceeding was challenged by the Staff, and the issue of her status is pending before the Atomic Safety and Licensing Board

1. Juan and Laurene Guzman agree to withdraw their request for a hearing, dated April 29, 1996.
2. The NRC Staff agrees to the modification of the Order Prohibiting Unescorted Access or Involvement in NRC-licensed Activities (Effective Immediately), dated April 19, 1996, as set forth in Paragraphs 3 and 4, below.
3. Juan Guzman agrees that from October 18, 1994, the date of his termination of unescorted access, until October 17, 1997, he is prohibited from seeking or obtaining unescorted access at any NRC-licensed facility and may not be involved in any NRC-licensed activities. For the purposes of this agreement, he term, "licensed activities" includes any and all activities which a licensee must or is permitted to perform in order to conduct activities authorized by its NRC-issued license, including those necessary to achieve compliance with all regulatory requirements imposed by the Commission.
4. Juan Guzman agrees that for two years following the three year prohibition, (that is, from October 17, 1997 to October 16, 1999), should he seek employment with any person (meaning an individual, a business, or other entity) whose operations he knows or reasonably should know involve any NRC-licensed or regulated activity, Mr. Guzman will provide a copy of the April 19, 1996 order and this agreement to that person prior to being hired, so that the person is aware of the Order in deciding whether to hire him

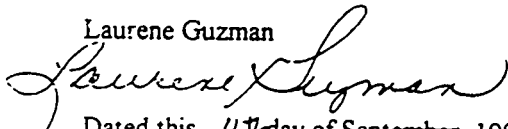
5. By signing this agreement, Mr. Guzman acknowledges his obligation, under federal statute and the Commission's regulations, to provide information to the NRC, an NRC licensee, or a contractor of an NRC licensee that is complete and accurate in all material respects. Mr. Guzman agrees that he will comply with all applicable NRC requirements.
6. Mr. Guzman acknowledges that he has read and fully understands the terms of this settlement agreement.
7. The Staff and Juan Guzman shall jointly move the Atomic Safety and Licensing Board designated in the above-captioned proceeding for an order approving this agreement and terminating this proceeding. Laurene Guzman shall file a notice of withdrawal of her hearing request at the same time the motion of the Staff and Mr. Guzman is filed. The terms of this agreement shall become effective upon approval of the Atomic Safety and Licensing Board.

Juan Guzman



Marian L. Zabler
Counsel for NRC Staff

Laurene Guzman



Dated this 4th day of ~~September~~, 1996
October



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 16, 1996

IA 96-042

Mr. Mark Jenson
[HOME ADDRESS DELETED
UNDER 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES

Dear Mr. Jenson:

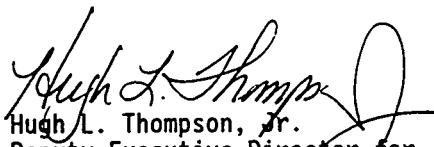
The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 of the Commission's regulations, as described in the Order. The Order becomes effective in 20 days unless a hearing is requested within this time.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order, once it becomes effective, shall be subject to criminal prosecution as set forth in that section. Failure to comply with the provisions of this Order may also result in civil sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Material Safety, Safeguards
and Operations Support

Enclosure: Order Prohibiting Involvement
in NRC-Licensed Activities

cc: Commonwealth of Puerto Rico

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Mark A. Jenson
[HOME ADDRESS DELETED
UNDER 10 CFR 2.2790]

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)
)
)
)

IA 96-042

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Mark A. Jenson was employed as President of NDT Services, Inc. in Caguas, Puerto Rico, in 1993. NDT Services, Inc. (NDTS or Licensee) holds License No. 52-19438-01, issued to the Licensee in 1987 and last amended by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on March 9, 1995. The license authorizes industrial gamma ray radiography in accordance with the conditions specified therein. Mr. Jenson was identified in a letter from the Licensee to NRC, dated September 4, 1993, and in other licensing and inspection correspondence, as the President, NDTS.

II

On December 16-17, 1993, a special inspection of NDTS' activities was conducted at the Licensee's facility in Caguas, Puerto Rico, in response to notifications received in the NRC Region II office that on September 4, 1993, two contract radiographers¹ employed by NDTS had been unable to return a radiography source to its shielded position following radiographic operations, which resulted in the evacuation of the Sun Oil Company refinery in Yabucoa,

1

The radiographers involved in the event were contracted by NDTS from National Inspection and Consultants (NIC), an Agreement State licensee in Florida. While no written contract was established to outline the scope and conditions of work, based on the information available, the NRC concluded that the work performed on September 4, 1993, was performed under the provisions of the NDTS license.

Puerto Rico, for several hours. Based on the results of the inspection, an investigation was initiated by the NRC Office of Investigations (OI) on December 30, 1993.

On December 21, 1995, OI completed its investigation and concluded, in part, that NDTs, with the knowledge and approval of the former Radiation Safety Officer (RSO) and former President, deliberately utilized radiographers untrained in NDTs operating and emergency procedures. During an August 31, 1995 interview with OI, Mr. Jenson stated that he was aware that even a highly qualified radiographer from another company must receive additional training before operating under NDTs' program. Mr. Jenson further stated that, prior to the September 4, 1993 incident, NDTs' former RSO told Mr. Jenson that the radiographers needed additional training prior to performing radiography. Nonetheless, Mr. Jenson allowed the radiographers to conduct licensed activities without the required training. In addition, Mr. Jenson stated that, following the September 4, 1993 incident, he requested both radiographers to sign a document certifying that the radiographers had been trained by NDTs, when in fact, they had not been. The radiographers refused to sign the document. Furthermore, during a May 10, 1995 transcribed interview with OI, one of the radiographers corroborated Mr. Jenson's admission (i.e., that Mr. Jenson asked the radiographer to sign a document indicating that the radiographer had been trained).

By letter dated February 20, 1996, Mr. Jenson was informed of the inspection and investigation results and was provided the opportunity to participate in a predecisional enforcement conference. Although the NRC has confirmation that

Mr. Jenson received the letter (i.e., returned certified mail receipt as well as a telephone acknowledgement by his spouse to the NRC on February 29, 1996), Mr. Jenson never responded to the letter and, therefore, no conference has been conducted with him. However, on May 17, 1996, a teleconference was conducted with Mr. Jenson to further discuss this case. Additionally, on February 29 and March 4, 1996, predecisional enforcement conferences were conducted with one of the contract radiographers, and NDTs, respectively.

Based on the information gathered during the inspection, investigation, predecisional enforcement conferences, and subsequent interviews in this case, the NRC has determined that: (1) Mr. Jenson deliberately permitted unqualified radiographers to perform radiography for NDTs on September 4, 1993, in that he knew the radiographers had not been trained in NDTs procedures or equipment; and (2) Mr. Jenson attempted to generate a false, NRC-required training record for the contract radiographers involved in the source disconnect event when, subsequent to September 4, 1993, he requested both individuals to sign a document indicating that the individual had been trained in the NDTs radiation safety manual and procedure, when in fact, the contract radiographer had not been trained.

III

Based on the above, the staff concludes that Mr. Jenson engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 34.31(a) by failing to utilize trained and qualified individuals for the conduct of radiographic operations at the Sun Oil Company

refinery on September 4, 1993. Mr. Jenson's attempt to generate a falsified training record for the radiographer also demonstrates a lack of integrity which cannot be tolerated. As the former President of NDTS, Mr. Jenson was responsible for ensuring that NDTS conducted activities in accordance with NRC requirements. The NRC must be able to rely on the Licensee, its officials and employees to comply with NRC requirements, including the requirements to train radiographers in accordance with NRC regulations and to maintain complete and accurate information required by the NRC. Mr. Jenson's deliberate misconduct in causing the Licensee to violate 10 CFR 34.31(a) is a violation of 10 CFR 30.10 and has raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Jenson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Jenson be prohibited from any involvement in NRC-licensed activities for a period of five years, and, if he is currently involved with another licensee in NRC-licensed activities, he must, following the effective date of this Order, cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Jenson is required to notify the NRC of his first employment involving NRC-licensed activities within a period of five years following the five-year prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, IT IS HEREBY ORDERED THAT:

- A. For a period of five years from the effective date of this Order, Mark A. Jenson is prohibited from engaging in, or exercising control over individuals engaged in, NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.
- B. At least five days prior to the first time that Mark A. Jenson engages in, or exercises control over, NRC-licensed activities within a period of five years following the five-year prohibition period outlined in Section IV.A above, he shall notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath

or affirmation, that Mark A. Jenson understands NRC requirements, that he is committed to compliance with NRC requirements, and that provides a basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Jenson of good cause.

V

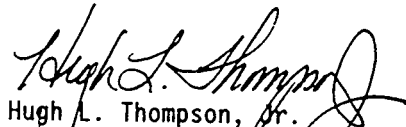
In accordance with 10 CFR 2.202, Mark A. Jenson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Jenson or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, Suite 2900, 101 Marietta Street, Atlanta, GA 30323, and to Mark A. Jenson, if the answer or hearing request is by a person other than Mark A. Jenson. If a person other than Mark A. Jenson requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mark A. Jenson, or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 16th day of July 1996



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 15, 1997

IA 97-026

Mr. David F. Johns, P.E.
President and Radiation
Safety Officer
Capital Engineering Services, Inc.
101 Weston Drive Unit 3
Dover, Delaware 19901

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(NRC Inspection No. 030-33244/96-001 and NRC Office of
Investigation Report No. 1-96-042)

Dear Mr. Johns:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because of your deliberate use of licensed material on numerous occasions after Capital Engineering Services, Inc.'s License had been suspended, a violation of 10 CFR 30.10. The Order requires, in part, that: (1) for a period of three years, you are prohibited from engaging in NRC-licensed activities; (2) for a period of three years, you provide a copy of the Order to any prospective employer who engages in NRC-licensed activities prior to your acceptance of employment involving non-NRC-licensed activities with such prospective employer; and (3) the first time you are employed in NRC-licensed activities following the three-year prohibition, you notify the NRC prior to engaging in NRC-licensed activities.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of the Order may also subject the person to a civil monetary penalty.

By separate letter being issued today, the NRC is taking enforcement action against Capital Engineering Services, Inc.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room.

David F. Johns, P.E.

- 2 -

Questions concerning these actions should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

Sincerely,


Edward L. Jordan
Deputy Executive Director for Regulatory
Effectiveness, Program Oversight,
Investigations and Enforcement

Enclosure: Order Prohibiting Involvement in NRC-Licensed
Activities (Effective Immediately)

cc w/encls:
State of Delaware

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

David F. Johns, P.E.
Dover, Delaware

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IA 97-026

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

David F. Johns, P.E., is the Owner/President, and Radiation Safety Officer at Capital Engineering Services, Inc. (Licensee), an NRC licensee who is the holder of Byproduct Nuclear Material License No. 07-30056-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of moisture/density gauges containing sealed sources. The License was originally issued on September 14, 1993, and is due to expire on September 30, 1998.

On February 12, 1996, the License was suspended by an NRC Order for nonpayment of fees. However, on May 17, 1996, the NRC issued a Conditional Order Extending Time that granted the Licensee's request to pay the delinquent fees in twelve monthly installment payments and extended the effective date of the February 12, 1996 Order to March 15, 1997. In addition, the Conditional Order stated that, in the event the Licensee fails to pay an installment during the 12-month period, each and every term and condition set forth in the February 12, 1996 Order will become immediately effective without further notice. The Licensee failed to make the first installment due June 15, 1996, after the Conditional Order was issued. Accordingly, on June 16, 1996, the terms of the February 12, 1996 "Order Suspending License" again became effective.

II

On October 30, 1996, November 19, 1996, February 20, 1997, and March 5, 1997, the NRC conducted an inspection at the Licensee's facility in Dover, Delaware. During the inspection, the inspector determined that the Licensee had continued to use licensed radioactive material after issuance of the NRC Order Suspending the License on February 12, 1996. Specifically, the Licensee used licensed material on numerous occasions between February 12, 1996, and May 16, 1996, before the Conditional Order Extending Time was granted, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3.

Additionally, the Licensee continued to use the gauges on numerous occasions after June 16, 1996, the date on which the Order Suspending License once again became effective because of the licensee's failure to pay the first fee installment required by the May 17, 1996 Order Extending Time, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3.

On October 2, 1996, the NRC issued to the Licensee a letter reiterating that, given the Licensee's failure to abide by the installment plan, the License had been suspended as specified in the February 12, 1996 Order Suspending License. During an NRC inspection on October 30, 1996, the Licensee informed the NRC inspector that it continued to use licensed material because it had not received the October 2, 1996 letter until October 28, 1996.

As a result, the NRC issued a Confirmatory Action Letter (CAL) to the Licensee on November 1, 1996, which confirmed the Licensee's commitments to cease use

and/or receipt of licensed material. The CAL references a telephone conversation between Mr. David Johns, the Licensee's President, and Mr. Frank Costello, NRC Region I, that took place on October 31, 1996, in which Mr. Johns agreed to the terms of the CAL.

Concurrently with NRC inspection, the NRC Office of Investigations (OI) conducted an investigation of these matters. During the investigation, Mr. Johns stated that he did not recall receiving by mail, or being informed of, the February 12, 1996 Order. However, Mr. Johns recalled requesting from the NRC that an installment plan be established for payment of the delinquent inspection and annual fees.

When questioned as to why the Licensee continued to use licensed material after Mr. Johns failed to make the installment due June 15, 1996, Mr. Johns stated that he forgot about the language in the May 17, 1996 Conditional Order (i.e., should the Licensee fail to pay an installment during the 12-month period, each and every term and condition set forth in the February 12, 1996 Order will become immediately effective without further notice).

As to his agreement to the terms of the CAL, Mr. Johns stated that he recalled the October 31, 1996 telephone conversation, but he understood that once he fully paid the outstanding debt, he could use the gauges. Mr. Johns, however, did not pay the outstanding debt¹ and, yet, allowed continued use of licensed material on numerous occasions from October 29 to, at least,

¹ By Check No. 2054 dated November 20, 1996, the Licensee paid \$531.16. However, the check did not clear due to insufficient funds.

November 19, 1996, a violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3. In addition, based on the OI investigation and inspection findings, the NRC determined that the Licensee failed to test sealed sources for leakage and/or contamination, a violation of License Condition 13.

On April 10, 1997, an enforcement conference was scheduled with the Licensee. However, the Licensee failed to appear for the enforcement conference. In a subsequent telephone conversation between Mr. Johns and Mr. R. Blough, Director, Division of Nuclear Materials Safety, NRC Region I, Mr. Johns indicated that he was not planning to attend the conference. During that telephone conversation, Mr. Johns was also informed that the NRC would proceed with appropriate enforcement action.

III

Based on the above, the NRC has concluded that Mr. Johns engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), by causing the Licensee to be in violation of Condition A of the February 12, 1996 Order and 10 CFR 30.3. This conclusion is: (1) based on the Licensee's continued use of licensed material in violation of NRC requirements despite Mr. Johns receiving numerous written communications that specifically informed him of the License suspension; and (2) supported by the fact that Mr. Johns requested from the NRC that an installment plan be established to remove the suspension of the License; Mr. Johns recalled the October 31, 1996 telephone conversation in which he was specifically informed that the License was suspended and in which he agreed not to use licensed material; and Mr. Johns failed to ensure that

the Licensee paid the outstanding debt before permitting resumption of licensed material use. In addition, as the Licensee's Radiation Safety Officer, Mr. Johns failed to ensure that the Licensee tested sealed sources for leakage and/or contamination, a violation of License Condition 13.

Given Mr. Johns' deliberate misconduct, and Mr. Johns' failure to ensure that the Licensee complied with other NRC requirements, the NRC no longer has the necessary assurance that Mr. Johns, should he engage in NRC-licensed activities under any other NRC license, would perform NRC-licensed activities safely and in accordance with NRC requirements.

Consequently, I lack the requisite reasonable assurance that NRC-licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Johns were permitted at this time to be involved in NRC-licensed activities.

Therefore, the public health, safety and interest require that Mr. Johns be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer. Mr. Johns is also required, for a period of three years from the date of this Order, to provide a copy of this Order to any prospective employer who engages in NRC-licensed activities prior to his acceptance of employment involving non-NRC-licensed activities with such prospective employer. Additionally, for

a period of three years following the three-year prohibition, the first time Mr. Johns is employed in NRC-licensed activities, Mr. Johns is required to notify the NRC of his first employment in NRC-licensed activities.

Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Johns conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT, EFFECTIVE IMMEDIATELY:

1. For a period of three years from the date of this Order, Mr. Johns is prohibited from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.
2. For a period of three years from the date of this Order, Mr. Johns shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as described in Paragraph IV.1 above) prior to his acceptance of employment involving non-NRC-licensed activities with

such prospective employer. The purpose of this requirement is to ensure that the employer is aware of Mr. Johns' prohibition from engaging in NRC-licensed activities.

3. For a period of three years following the three-year prohibition, the first time Mr. Johns is employed in NRC-licensed activities, Mr. Johns shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415, prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, Mr. Johns must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the

extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Johns or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemaking and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415, to Mr. Johns if the answer or hearing request is by a person other than Mr. Johns. If a person other than Mr. Johns requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Johns or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Johns may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the

Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Edward L. Jordan
Deputy Executive Director for Regulatory
Effectiveness, Program Oversight,
Investigations and Enforcement

Dated at Rockville, Maryland
this 15th day of May 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 12, 1995

EA 94-240
IA 95-015
IA 95-016

Midwest Testing, Inc.
ATTN: Mr. William Kimbley, President
Ms. Joan Kimbley, General Manager and
Treasurer
2421 Production Drive
Indianapolis, Indiana 46241

SUBJECT: CONFIRMATORY ORDER AND NOTICE OF TERMINATION OF LICENSE
(OI INVESTIGATION REPORT NO. 3-93-022R)

Dear Mr. and Ms. Kimbley:

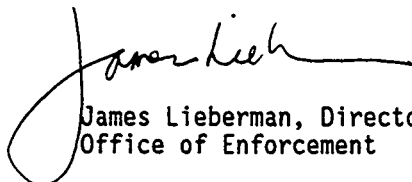
The Confirmatory Order (Order) to which you agreed on June 2, 1995, has been executed. A signed copy of the Order is enclosed. In addition, your license has been terminated as of the date of this letter in accordance with the Order Suspending License dated August 26, 1994. Enclosed is a copy of Amendment 1 terminating License No. 030-24866-02. We consider this matter settled.

Under the terms of this Order, for a period of five years beginning June 2, 1995, you, as well as Midwest Testing, Inc. and any successor entity, are prohibited from applying to the NRC for a license, and prohibited from engaging in, or controlling, any NRC-licensed activity. Should you violate the terms of the Order, you may be subject to civil and criminal sanctions under Sections 233 and 234 of the Atomic Energy Act of 1954, as amended.

Questions concerning this Order should be addressed to me at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosures: As Stated

Docket No. 030-32827
License No. 13-24866-02

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
MIDWEST TESTING, INC.	)	Docket No. 030-32827
Indianapolis, Indiana	)	License No. 13-24866-02
	)	EA 94-240
MR. WILLIAM G. KIMBLEY	)	
	)	IA 95-015
MS. JOAN KIMBLEY	)	
	)	IA 95-016
	)	

CONFIRMATORY ORDER

I

Midwest Testing, Inc. (Licensee) is holder of NRC License No. 13-24866-02 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorized the Licensee to possess and use cesium-137 and americium-241 as sealed sources in moisture/density gauges. The License was issued on August 19, 1992, and is being terminated by Amendment No. 1, which is being issued on the date of this Order.

II

On July 27, 1993, a routine inspection of licensed activities was conducted at Midwest Testing, Inc. (Licensee) by NRC Region III. During the inspection the inspector identified that licensee management had allowed workers to operate moisture density gauges without personnel monitoring devices (film badges) and that required leak tests of the gauges had not been performed.

The NRC Office of Investigations (OI) conducted an investigation to determine whether willful violations of NRC requirements had occurred. Based on the NRC inspection and OI investigation, it appears that Mr. William G. Kimbley, owner

of Midwest Testing, deliberately violated NRC requirements by:

- (1) allowing operators to use moisture density gauges without personnel monitoring devices between December 24, 1991, and August 25, 1993, in violation of Condition 18.A of License No. 13-24866-01 (expired on March 31, 1992) and Condition 20.A of License No. 13-24866-02 (issued on August 19, 1992);
- (2) not performing leak tests of two moisture density gauges between August 19, 1992, and July 31, 1993, in violation of Condition 13.A of License No. 13-24866-02;
- (3) not requesting a license amendment to name a new Radiation Protection Officer, in violation of Condition 11 of License No. 13-24866-02, when the individual named on the License left Midwest Testing in October 1993;
- (4) storing licensed material at an unauthorized location since March 1994 in violation of Condition 10 of License No. 13-24866-02 and 10 CFR 30.34(c); and
- (5) allowing moisture density gauges to be used between April 1, 1992, and August 19, 1992, with an expired license in violation of 10 CFR 30.3 and 10 CFR 30.36(c)(1)(i) and (iii).

In addition, it appears that Ms. Joan Kimbley, General Manager and Treasurer of Midwest Testing, Inc., deliberately violated Items (1), (2), and (5) above. These actions appear to have been a result of Midwest Testing, Inc. financial constraints, inexperience of the General Manager and, in general, a lack of appreciation on the part of the Owner and the General Manager of the regulatory significance and consequences of the violations.

A Confirmatory Action Letter was issued to the Licensee on March 21, 1994, confirming that the Licensee would secure its moisture density gauges in locked storage until the Licensee: (1) designated a Radiation Protection Officer, (2) obtained NRC approval via a license amendment for its designated Radiation Protection Officer and its current moisture density gauge storage location, (3) demonstrated that all its moisture density gauges were appropriately tested for leakage, and (4) demonstrated that personnel radiation monitoring devices were provided for those persons designated to use moisture density gauges. The Licensee did not use its moisture density gauges after issuance of the Confirmatory Action Letter.

Subsequently, an Order Suspending License (Effective Immediately) was issued to the Licensee on August 26, 1994, for nonpayment of fees, which required: (1) the Licensee to suspend NRC licensed activities and dispose of its licensed material; and (2) NRC termination of License No. 13-24866-02 following disposal of the licensed material. The Licensee disposed of its licensed material in December 1994. NRC Region III verified that the licensed material was properly transferred to authorized recipients.

III

A transcribed enforcement conference was conducted between the NRC and the Licensee on March 15, 1995, to discuss the apparent violations, their causes and safety significance. Mr. Kimbley stated during the enforcement conference, "And the question about would we ever pursue an NRC license again, the answer to that is no. If there is any way I can give you assurance of that, I'll be glad to do that." Ms. Kimbley stated during the Enforcement Conference, "Like we stated earlier, we don't intend to continue with any licensed material in the future."

Further, in a telephone conversation on May 2, 1995, with Mr. Paul Pelke, NRC Region III, Mr. and Ms. Kimbley agreed to the provisions and to the issuance of this Order to resolve all matters pending between them. Specifically, Mr. Kimbley agreed, for a period of five years from the date he signs this Confirmatory Order, that Mr. Kimbley, Midwest Testing, Inc., or any successor entity wherein Mr. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Mr. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time. Ms. Kimbley agreed, for a period of five years from the date she signs this Confirmatory Order, that Ms. Kimbley, Midwest Testing, Inc., or any successor entity wherein Ms. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Ms. Kimbley, Midwest Testing, Inc., or a successor entity,

as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

I find that the Licensee's commitments as stated in the May 2, 1995 conversation with Paul Pelke, NRC Region III, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order.

IV

Accordingly, pursuant to sections 81, 161b, 161i, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR Part 30, IT IS HEREBY ORDERED that:

1. For a period of five years from the date Mr. William G. Kimbley signs this Confirmatory Order, Mr. Kimbley, Midwest Testing, Inc., or any successor entity wherein Mr. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Mr. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.

2. For a period of five years from the date Ms. Joan Kimbley signs this Confirmatory Order, Ms. Kimbley, Midwest Testing, Inc., or any successor entity wherein Ms. Kimbley is an authorized user, radiation safety officer, owner, an officer, or a controlling stockholder, will not apply to the NRC for a new license, nor shall Ms. Kimbley, Midwest Testing, Inc., or a successor entity, as described above, engage in licensed activities within the jurisdiction of the NRC for that same period of time.
3. Mr. Kimbley, Ms. Kimbley, Midwest Testing, Inc., or any successor entity, as described above, waive the right to contest this Order in any manner, including requesting a hearing on this Order.

The Regional Administrator, NRC Region III, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee, Mr. William G. Kimbley, or Ms. Joan Kimbley of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, Mr. William G. Kimbley, and Ms. Joan Kimbley may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and

Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings.

This Order was consented to:

FOR THE LICENSEE, WILLIAM G. KIMBLY, AND JOAN KIMBLY

BY: William G. Kimbly Dated: 4/02/95
 William G. Kimbly

Notary: Rebecca Kimbly
 Residence: Hendricks County, Indiana - Expires 6-19-98

BY: Joan Kimbly Dated: 6-2-95
 Joan Kimbly

Notary: Rebecca Kimbly
 Residence: Hendricks County, Indiana - Expires 6-19-98

FOR THE NUCLEAR REGULATORY COMMISSION

BY: James Lieberman
 James Lieberman

Order Dated: June 12, 1995
 Rockville, Maryland



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 18, 1997

IA 97-011

Mr. Krishna Kumar
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Kumar:

The enclosed Order, effective immediately, is being issued to you as a result of the findings of an NRC inspection conducted on December 2-3, 1993, and an investigation by the NRC Office of Investigations (OI), initiated in 1993 which found that you engaged in deliberate misconduct with respect to NRC-licensed activities while you were President of Power Inspection, Inc.

The enclosed Order prohibits you from engaging in NRC-licensed activities for a period of 10 years. Further, for a period of five years after the ten-year prohibition, the Order also requires you to provide notice to the NRC of any future employment or involvement in NRC-licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to a civil monetary penalty.

In addition, the NRC is issuing a \$40,000 civil penalty to Power Inspection, Inc., (see Enclosure 2) on this date based, in part, on your actions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

Mr. Krishna Kumar

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room.

Sincerely,



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
(Effective Immediately)
2. Notice of Violation and Proposed Imposition of Civil Penalties

cc w/encls:

Commonwealth of Pennsylvania
State of Florida

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Krishna Kumar

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IA 97-011

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Krishna Kumar (Mr. Kumar) was President of Power Inspection, Inc. (PI or Licensee). PI is the holder of Byproduct License No. 37-21428-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The License authorizes the Licensee to use iridium-192 and cobalt-60 sealed sources for the performance of industrial radiography at its facility in Wexford, Pennsylvania, as well as at temporary job sites. The License was most recently renewed on January 31, 1989, and expired on January 31, 1994. In addition, the Licensee submitted a request, dated December 30, 1993, that the license be terminated. Action on that request has been held in abeyance pending further NRC review.

In addition, PI acted as a vendor supplying services to nuclear power plants, including the performance of nondestructive testing services, such as eddy current testing. Such services were provided to the Perry and Cooper nuclear power plants in 1993.

II

On December 2 and 3, 1993, the NRC performed an inspection at the Licensee's Wexford facility of activities conducted under the License. During the

inspection, the NRC found numerous violations of NRC requirements. The violations included: the failure of the Radiation Safety Officer (RSO) named on the License to perform required duties; the failure to conduct quarterly audits of all radiographers; the failure to provide the required annual refresher training to the radiographers; the failure to perform, at the required frequency, the required inspection and maintenance on the exposure device (camera) containing an iridium-192 source; the failure to perform leak tests of the sealed sources at the required frequency; the failure to promptly collect and submit film badges for processing; and the failure to maintain radiography utilization logs.

Furthermore, the NRC found during the December 1993 inspection that the utilization logs for the iridium-192 source, covering the period of July through November 1993, as well as the utilization logs for the cobalt-60 source, covering the period of July through October 1993, were also unavailable for inspection at the time of the NRC inspection on December 2, 1993.

On December 2, 1993, an NRC investigation was also initiated by the NRC Office of Investigations (OI). During its investigation, OI concluded that:

- a. with respect to the vendor-related activities: (1) false Eddy Current Testing (ET) qualification certifications were deliberately generated by PI for at least three employees who performed ET examinations at Perry and Cooper nuclear power plants during 1993 and false ET qualification certification examination results and Personnel Certification Summaries

were deliberately generated for four employees, and these falsifications were condoned or directed by the former President (i.e., Mr. Kumar), the former Vice President/RSO, and the former Quality Assurance Manager; and (2) three PI employees tested positive for illegal drug use prior to working at Perry and Cooper in 1993, and the former President of PI was aware of this and did not notify Perry and Cooper.

- b. with respect to the materials License: (1) a minimum of 38 source utilization logs (for radiography performed) were falsely created by PI employees to satisfy questions asked during an April 1993 NRC inspection regarding the lack of utilization logs, and this activity was undertaken at the direction of the former President of PI; (2) the former President of PI knowingly failed to notify the NRC of a change of radiation safety officer in approximately August 1993; and (3) responses in PI's letter, dated July 14, 1993, to the NRC, were deliberately incomplete and inaccurate, and the former President and individual identified on PI's NRC license as the RSO were responsible for knowingly providing this false information to the NRC.

The inaccurate information provided to the NRC in the letter dated July 14, 1993, was in response to a previous Notice of Violation issued to the Licensee on June 16, 1993, for numerous violations identified during an inspection conducted in April 1993. One of the violations identified during the April 1993 inspection involved the failure to maintain personnel monitoring records for the radiographers at the facility. In the July response, signed by the former RSO (i.e., the

individual identified on PI's NRC license as the RSO), the Licensee stated that records of such personnel monitoring had been misplaced at the time of the April inspection. In fact, the NRC learned, during the December 2 and 3, 1993 inspection, that Mr. Kumar knew that those records alluded to in the licensee's July 1993 response did not even exist at the time of the April inspection, since the film badges had not been processed until after the April inspection was completed.

III

Based on the above, Mr. Kumar, former President of PI, a contractor to licensees of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2), by deliberately submitting in March and in October 1993 to the Cleveland Electric Illuminating Company (CEIC) and Nebraska Public Power District (NPPD), both licensees of the NRC, ET qualification certification examination results and Personnel Certification Summaries which were inaccurate. Mr. Kumar also violated 10 CFR 30.10(a)(2) by submitting on March 5, 1993, and on October 6, 1993, to each NPPD and CEIC, respectively, three inaccurate letters stating that the trustworthiness and reliability of two individuals had been established by an investigation, when Mr. Kumar knew that the individuals had used illegal substances.

In addition, Mr. Kumar, an employee of PI, a licensee of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), which caused PI to be in violation of 10 CFR 30.9(a) and 10 CFR 34.27. Specifically:

- a. As a result of Mr. Kumar's direction to fabricate source utilization logs, PI violated 10 CFR 30.9(a) and 10 CFR 34.27 by maintaining a minimum of 38 inaccurate logs for radiography performed by PI; and
- b. As a result of Mr. Kumar's direction, PI violated 10 CFR 30.9(a) by providing to the NRC a letter dated July 14, 1993, which contained inaccurate information relating to whether corrective actions had been taken in response to violations listed in an NRC Notice of Violation dated June 16, 1993.

The NRC must be able to rely on its licensees and their employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Kumar's actions in deliberately violating NRC requirements and in causing the Licensee to be in violation of NRC requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to both the NRC and NRC licensees. Moreover, given Mr. Kumar's indictment on April 28, 1988¹, there is a pattern of record falsification which raises further doubt about Mr. Kumar's integrity and whether he can be relied upon to comply with NRC requirements.

¹ Mr. Kumar and PI were indicted by the United States Attorney in the Western District of Pennsylvania for fraud and false statements in connection with testing that was to be performed at the Duquesne Light Company, a licensee of the NRC. In this case, Mr. Kumar admitted that he directed falsification of eddy current test equipment calibration certifications to save PI time and money, and subsequently provided the false certificates to Duquesne Light Company.

Consequently, I lack the requisite reasonable assurance that information provided to the NRC by Mr. Kumar, or records required to be maintained by the Licensee, will be complete and accurate in all material respects if Mr. Kumar were permitted to be involved in any NRC-licensed activities. I also lack the requisite assurance that NRC-licensed activities will be conducted safely or in accordance with NRC requirements or that the health and safety of the public will be protected if Mr. Kumar were involved in NRC-licensed activities. In addition, I find that Mr. Kumar is either unable or unwilling to assure that NRC requirements are being and will be followed.

Therefore, I find that the public health, safety, and interest require that Mr. Kumar be prohibited from involvement in NRC-licensed activities for ten years from the date of this Order, and if he is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer. In addition, for a period of five years commencing after the ten-year period of prohibition, Mr. Kumar must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Kumar's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 57, 62, 81, 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 30.10, 50.5, and 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. Krishna Kumar is prohibited for ten years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include the licensed activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction. In addition, if Mr. Kumar is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer.
- B. For a period of five years, after the above ten-year period of prohibition has expired, Mr. Kumar shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In

the first such notification, Mr. Kumar shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement (OE), may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Kumar of good cause.

V

In accordance with 10 CFR 2.202, Mr. Kumar must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order, and shall set forth the matters of fact and law on which Mr. Kumar or other person adversely affected relies, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Kumar if the answer or hearing request is by a person other than Mr. Kumar. If a person other than Mr. Kumar requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Kumar or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Kumar or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the

extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Dated at Rockville, Maryland
this 10th day of February 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

AUG 26 1994

IA 94-019

Mr. Larry S. Ladner
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of 10 CFR 30.10 of the Commission's regulations as described in the Order.

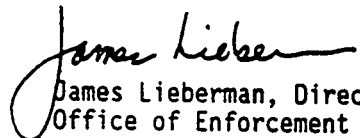
Based on an investigation conducted by the NRC's Office of Investigation, the NRC Staff has determined that you deliberately failed to supervise radiographers' assistants performing licensed activities, falsified a large number of quarterly personnel audits and provided false information to NRC officials. A copy of the synopsis of the investigation is enclosed.

Failure to comply with the provisions of this Order may result in further civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosures:
1. Order
2. Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

IA 94-019

Larry S. Ladner

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ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Larry S. Ladner has been employed as a radiographer in the field of industrial radiography since approximately 1964. In October, 1989, Mr. Ladner was hired by the American Inspection Company, Inc. (AMSPEC). AMSPEC held Materials License No. 12-24801-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. This license authorized the conduct of industrial radiography activities in accordance with certain specified conditions. On April 30, 1992, the license was suspended as a result of significant safety violations and related safety concerns. Mr. Ladner worked as both a radiographer and a supervisor until his dismissal by AMSPEC in the latter part of 1991.

II

Between August 22, 1991 and November 12, 1992, the NRC Office of Investigations (OI) conducted an investigation of licensed activities of AMSPEC. During the course of this investigation, the AMSPEC license was suspended when a significant number of safety violations were identified. In addition, the investigation revealed that Mr. Ladner, in his position as a supervisor (1) deliberately allowed radiographers' assistants to work

unsupervised on numerous occasions, (2) deliberately falsified in excess of 100 quarterly personnel audits, and (3) deliberately gave false information to NRC officials regarding the unauthorized use of licensed material.

10 CFR 34.44 requires that a radiographer's assistant shall be under the personal supervision of a radiographer whenever he uses radiographic exposure devices, sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure. The personal supervision shall include: (a) the radiographer's personal presence at the site where the sealed sources are being used; (b) the ability of the radiographer to give immediate assistance if required; and (c) the radiographer watching the assistant's performance of the operations referred to in this section. In addition, 10 CFR 34.11(d)(1) requires, in part, that an applicant have an inspection program that requires the observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed three months.

10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, and information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects.

While functioning as a radiation protection officer, Mr. Ladner deliberately caused a violation of 10 CFR 34.44 in December 1990 and February through May 1991 by allowing three radiographers' assistants to work independently and without personal supervision. During this same period, Mr. Ladner also

authorized others to use his name on check-out logs, in violation of 10 CFR 30.10. Moreover, Mr. Ladner's employer (AMSPEC) had an approved program that required the observation of radiographers and radiographers' assistants at the required interval as prescribed by 10 CFR 34.11(d); however, between September 1990 and November 1991, he deliberately disregarded the licensee's program in excess of 100 times by falsifying records of audits that were never performed, causing a violation of 10 CFR 30.9. During an NRC inspection conducted on July 22-23, 1991, Mr. Ladner deliberately provided inaccurate information to NRC inspectors when he claimed no knowledge of a reported unauthorized use of licensed material, when in fact he was aware of such use.

On January 15, 1993, Mr. Ladner pled guilty to one felony count involving deliberate violations of the Atomic Energy Act based on his violations of these requirements.

III

Based on the above, Mr. Ladner engaged in deliberate misconduct which caused AMSPEC to be in violation of 10 CFR 30.9 and 34.11(d). The NRC must be able to rely on licensees and their employees to comply with NRC requirements, including the requirements to supervise radiographer's assistants performing licensed activities and to maintain and compile records that are complete and accurate in all material respects. Mr. Ladner's deliberate actions in causing AMSPEC to be in violation of NRC requirements (e.g. 30.9 and 34.11(d)), and his deliberate submittal to AMSPEC of false audit records, which are violations of 10 CFR 30.10, have raised serious doubt as to whether he can be relied on to comply with NRC requirements and to provide complete and accurate

information to the NRC. Mr. Ladner's deliberate misconduct, including his deliberate false statements to Commission officials, cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Ladner were permitted at this time to supervise or perform licensed activities in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. Ladner be prohibited from engaging in NRC licensed activities (including supervising, training and auditing) for either an NRC licensee or an Agreement State licensee in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of three years from the date of this Order. In addition, for a period of two years commencing after completion of the three year period of prohibition, Mr. Ladner is required to notify the NRC of his employment by any person or entity engaged in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Ladner's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this order be effective immediately.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in

10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Larry S. Ladner is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. During this time period, Mr. Ladner must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities, at the time he accepts employment.
2. For a period of two years after the three-year period of prohibition has expired, Larry S. Ladner shall within 20 days of his acceptance of an employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. Ladner shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may in writing, relax or rescind any of the above conditions upon demonstration by Mr. Ladner of good cause.

In accordance with 10 CFR 2.202, Larry S. Ladner must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Larry S. Ladner or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Larry S. Ladner if the answer or hearing request is by a person other than Larry S. Ladner. If a person other than Larry S. Ladner requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Larry S. Ladner or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Larry S. Ladner, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing; the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or processing. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 26th day of August 1994

SYNOPSIS

On August 22, 1991, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region II, requested an investigation to determine whether officials, managers, and/or employees of The American Inspection Company, Inc. (AMSPEC), the licensee, had intentionally violated regulatory and license condition requirements set forth in 10 CFR Parts 20, 30, and 34 and the NRC license of January 15, 1987, respectively. According to reported allegations, licensee management officials had permitted unqualified technicians to perform radiography operations at the Hess Oil Virgin Islands Company (HOVIC) facility, St. Croix, U.S. Virgin Islands, which had contracted with AMSPEC for nondestructive examination services. Additionally, licensee officials allegedly: (1) discriminated (involuntary termination) against technicians for reporting radiation health and safety concerns, (2) falsified radiation safety training documents, (3) provided false and misleading information to the NRC, and (4) used source material in a manner not authorized by the license (irradiation of mice).

The Office of Investigations (OI) reviewed the circumstances of the alleged regulatory and license condition violations during which other improprieties by the licensee were identified. The investigation by OI did not substantiate that licensee management officials had terminated radiography technicians for reporting radiation health and safety concerns. It was concluded, however, that these licensee officials at the HOVIC facility appeared insensitive to employee concerns of all topics, including radiation safety, and they were perceived by technicians as acting with apparent disregard concerning this issue. The investigation further determined that licensee officials deliberately provided false and misleading radiation safety-related information to NRC representatives which was pertinent to the regulatory process. The investigation substantiated that the licensee, through actions of some radiation protection officers (RPOs), deliberately falsified radiation safety training records, inserted false records in technician files to give the impression required training was accomplished, and they also conspired to conceal these training deficiencies and improprieties from the NRC. The investigation surfaced and substantiated the allegation that licensee officials and RPOs deliberately falsified required personnel radiation safety audits and accompanying reports and they also created audit reports to make complete the radiation safety files of some technicians.

The investigation also disclosed and confirmed numerous instances of radiographers' assistants performing radiography without supervision and the deliberate falsification of source utilization logs to give the appearance that required supervision was present, all with the apparent knowledge and concurrence of licensee management officials. It was also determined during the investigation that licensee training officials (RPOs) frequently

failed to provide the Operation and Emergency Procedures (O&EP) Manual to new employees prior to source utilization. The investigation also determined that some licensee RPOs were not trained, examined, and certified according to Radiation Safety Program requirements and AMSPEC officials, including the radiation safety officer (RSO) and several RPOs, were aware of some of these violations and failed to correct them. Further, on at least one occasion, the RSO and an RPO conspired to concoct a plausible explanation for the NRC as to why RPO examination/certification requirements were violated.

The investigation substantiated the allegation that radioactive source material was utilized improperly when an AMSPEC night shift supervisor, in the presence of technicians, radiographed a mouse during two to three consecutive source exposures at the HOVIC facility. The OI investigation, and a previous NRC inspection at the St. Croix location, also revealed instances in which AMSPEC technicians failed to observe required surveying and posting activities during radiography operations, actions which demonstrated either an apparent disregard for regulations and/or radiation safety training deficiencies. Finally, the investigation disclosed that the RSO and other licensee management officials deliberately failed to perform required radiation safety review, evaluation, and oversight functions and responsibilities during the past 3 years.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 12, 1996

IA 96-100

Mr. John Maas
c/o Mr. Paul M. Sandler, Esq.
Freishtat & Sandler
201 East Baltimore Street
Suite 1500
Baltimore, Maryland 21202

SUBJECT: CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)

Dear Mr. Maas:

The enclosed Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 of the Commission's regulations, as described in the Order. The Confirmatory Order which you consented to by letter dated October 22, 1996 from your counsel, prohibits your involvement in NRC-licensed activities for a period of five years and requires notification to the NRC of your first involvement in NRC-licensed activities within a period of five years following the prohibition period.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to me at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in dark ink, appearing to read "James Lieberman", is written over a horizontal line.

James Lieberman
Office of Enforcement

Enclosure: Confirmatory Order Prohibiting Involvement
in NRC-licensed Activities

cc w/encl:
Commonwealth of Puerto Rico

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

John Maas

)
)
)

IA 96-100

CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. John Maas was employed as President of National Circuits Caribe, Inc. (NCCI) in Fajardo, Puerto Rico, in 1991. NCCI possessed and used radioactive materials at its Fajardo, Puerto Rico facility under the authority of a general license issued by the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 31.5. The general license authorized the licensee to use byproduct material contained in devices designed and manufactured for the purpose of gauging or controlling thickness of materials during industrial processes. NCCI filed for bankruptcy under Chapter 11 in Puerto Rico in March 1991 but the case was dismissed in October 1991 due to lack of response from the company. The Fajardo facility was abandoned sometime around October 1991.

II

On June 23, 1993, the NRC was notified by the Commonwealth of Puerto Rico's Bureau of Radiological Health (Bureau) of the discovery of radioactive sources and a quantity of hazardous chemicals on property leased from the Puerto Rico Industrial Development Corporation (PRIDCO) by NCCI. Bureau personnel indicated that the abandoned sources had been found in an abandoned building by PRIDCO personnel.

The NRC, Region II, staff performed an inspection of the site on June 30, 1993, and determined there were five sources containing microcurie amounts of Thallium-204 or Promethium-147. The sources were in backscatter gauges that were authorized for use by NCCI under an NRC general license, specified in 10 CFR 31.5. The staff determined that the source/gauges had been abandoned at the site since October 1991. NRC and PRIDCO oversaw the disposal of the gauges, which was completed in September 1994.

The NRC Office of Investigations (OI) conducted an investigation, documented in OI Report No. 2-93-044 dated January 31, 1996, to determine whether NCCI had deliberately abandoned licensed material at the plant site. Based on the evidence developed and reviewed, OI determined that during approximately October 1991, the five generally licensed backscatter gauges were deliberately abandoned by the licensee, with the knowledge of the President of the company, Mr. Maas.

Mr. Maas, the former President of NCCI, was prosecuted by the Department of Justice and on December 5, 1995, pled guilty to the charges of 1) willfully and knowingly storing or causing to be stored hazardous wastes for longer than ninety days without having first obtained a permit or interim status for said storage, in violation of Title 42, United States Code, Section 6928(d)(2)(a) and 2) willfully and knowingly abandoning devices containing byproduct radioactive materials, in violation of Section 223 of the Atomic Energy Act of 1954, as amended, Title 42, United States Code, Section 2273 and 10 CFR 31.5(c)(6). On August 8, 1996, Mr. Maas was sentenced to probation and required to perform community service.

III

The Commission's regulation in 10 CFR 30.10 requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes a licensee to be in violation of any regulation issued by the Commission. Based on the facts set forth above, the staff concluded that Mr. Maas engaged in deliberate misconduct that caused the licensee to abandon devices containing byproduct material in violation of 10 CFR 31.5(c)(6). As President of NCCI, Mr. Maas was responsible for ensuring that NCCI conducted activities in accordance with NRC requirements. The NRC must be able to rely on licensees and their officials and employees to comply with NRC requirements. Mr. Maas' actions in causing NCCI to violate 10 CFR 31.5 have raised serious doubts as to whether he can be relied on to comply with NRC requirements.

The NRC staff sent a letter dated October 10, 1996, to Mr. P. M. Sandler, Mr. Maas' attorney, containing the proposed terms of this Order which are set out in Section IV of this Order. The proposed terms are that Mr. Maas be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order, and is required to notify the NRC of his first involvement in NRC-licensed activities during the five years following the prohibition period. The NRC staff requested Mr. Sandler to review the proposed items with Mr. Maas and, if Mr. Maas agreed to the proposed terms of this Order, have him indicate his agreement with those terms by signing an enclosed acknowledgement. By letter dated October 22, 1996, Mr. Sandler transmitted the acknowledgement of the proposed provisions of the Order which had been signed by Mr. Maas. In the acknowledgement, Mr. Maas

indicated that he understood the proposed provisions, committed to complying with them, and consented to the issuance of an Order confirming these provisions. In the acknowledgment, Mr. Maas also waived his right to have a hearing on such an Order.

I find that Mr. Maas' commitments as set forth in the letter of October 22, 1996, are acceptable and necessary and conclude that with these commitments public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Mr. Maas' commitments in the October 22, 1996 letter be confirmed by this Order. As stated above, Mr. Maas has agreed to this action. Pursuant to 10 CFR 2.202, I have also determined, based on Mr. Maas' consent and on the significance of the conduct described above, that public health and safety require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. For a period of five years from the date of this Confirmatory Order, Mr. Maas is prohibited from engaging in or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or

general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

2. At least five days prior to the first time that Mr. Maas engages in, or exercises control over, NRC-licensed activities within a period of five years following the five-year prohibition in Section IV.1 above, he shall notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Mr. Maas understands NRC requirements, that he is committed to compliance with NRC requirements, and that provides a basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Regional Administrator, Region II, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Maas of good cause.

In accordance with 10 CFR 2.202, any person adversely affected by this Confirmatory Order, other than Mr. Maas, may submit an answer to this Order, and may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The request for a hearing shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which any other person adversely affected relies and the reasons as to why the Confirmatory Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323 and to Mr. Maas. If a person other than Mr. Maas requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any

hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 12th day of December 1996



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

AUG 26 1994

IA 94-017

Daniel J. McCool
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of 10 CFR 30.10 of the Commission's regulations as described in the Order.

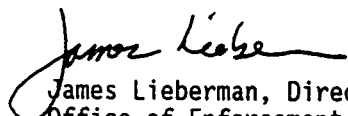
Based on an investigation conducted by the Nuclear Regulatory Commission's Office of Investigation, the NRC Staff has determined that you deliberately conspired with other AMSPEC officials to deceive the Commission and provided false testimony, under oath, to NRC officials. In addition, you deliberately failed to train and certify employees in radiation safety as required by the AMSPEC license conditions. A copy of the synopsis of the investigation is enclosed.

Failure to comply with the provisions of this Order may result in further civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. OI Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Daniel J. McCool

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IA 94-017

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Daniel J. McCool has been employed as a radiographer in the field of industrial radiography since approximately 1968. On approximately January 1, 1987, Mr. McCool initiated licensed activities at the American Inspection Company, Inc., (AMSPEC), in his capacity as President. AMSPEC held Materials License No. 12-24801-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorized the conduct of industrial radiography activities in accordance with specified conditions. On April 30, 1992, the license was suspended as a result of significant safety violations and related safety concerns. Mr. McCool was President of AMSPEC at the time of license suspension.

II

Between August 22, 1991 and November 12, 1992, the NRC Office of Investigations conducted an investigation of licensed activities at AMSPEC. During the course of this investigation, the AMSPEC license was suspended when a significant number of safety violations were identified. In addition, the investigation revealed that Mr. McCool, in his capacity as President of AMSPEC, conspired with other AMSPEC officials to deceive the Commission

regarding training of employees and, in addition, deliberately provided false sworn testimony to NRC officials.

AMSPEC submitted a Radiation Safety Manual as a part of its license application dated September 20, 1986. A part of this manual refers to employee training to satisfy the requirements of Appendix A of 10 CFR Part 34. This manual was incorporated as a part of License Condition 17 of the AMSPEC license. In addition, 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, and information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects. 10 CFR 30.10(a) requires, in part, that any licensee or any employee of a licensee may not: (1) engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or limitation of any license, issued by the Commission, or (2) deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

From 1990 through April 1992, Mr. McCool deliberately violated License Condition 17 by failing to train new Radiation Protection Officers (RPOs), and by allowing others to administer the RPO qualification process, including exams and certification, although this was contrary to the Radiation Safety Program established in the Radiation Safety Manual. For over two years, from late fall 1989 through April 1992, Mr. McCool failed to perform the radiation safety audit function required by the Radiation Safety Program. In addition to the above, Mr. McCool deliberately provided false information under oath to

an investigator and an inspector on May 4, 1992, regarding training of an individual in order to qualify that individual for work as an RPO.

On September 22, 1993, Mr. McCool pled guilty to two felony violations of the Atomic Energy Act based on his violations of these requirements. The violations to which Mr. McCool pled were: (1) conspiracy to violate the Atomic Energy Act, and (2) providing false information to the NRC.

III

Based on the above, Mr. McCool engaged in deliberate misconduct which caused the licensee to be in violation of the training requirements of License Condition 17 and 10 CFR 30.9. The NRC must be able to rely on licensees and their employees to comply with NRC requirements, including the requirements to train and certify employees in radiation safety and procedures and the requirement to provide information that is complete and accurate in all material respects. Mr. McCool's actions in deliberately causing AMSPEC to be in violation of NRC requirements regarding training and completeness and accuracy of information and his deliberate false statements to NRC officials in violation of 10 CFR 30.10 have raised serious doubt as to whether he can be relied on to comply with NRC requirements, including the requirement to provide complete and accurate information to the NRC. Mr. McCool's deliberate misconduct, including his false statement to Commission officials, cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements

and that the health and safety of the public will be protected if Mr. McCool were permitted at this time to supervise or perform licensed activities in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. McCool be prohibited from engaging in NRC-licensed activities (including any supervising, training or auditing) for either an NRC licensee or an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of five years from the date of this Order. In addition, for a period of five years commencing after completion of the five year period of prohibition, Mr. McCool is required to notify the NRC of his employment by any person or entity engaged in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. McCool's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this order be effective immediately.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Daniel J. McCool is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or

general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. During this time period, Mr. McCool must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities, at the time he accepts employment.

2. For a period of five years after the five-year period of prohibition has expired, Daniel J. McCool shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. McCool shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may in writing, relax or rescind any of the above conditions upon demonstration by Mr. McCool of good cause.

V

In accordance with 10 CFR 2.202, Daniel J. McCool must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order.

The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Daniel J. McCool or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Daniel J. McCool if the answer or hearing request is by a person other than Daniel J. McCool. If a person other than Daniel J. McCool requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

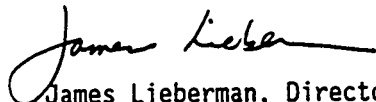
If a hearing is requested by Daniel J. McCool or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Daniel J. McCool or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order,

including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or processing. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 26th day of August 1994

SYNOPSIS

On August 22, 1991, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region II, requested an investigation to determine whether officials, managers, and/or employees of The American Inspection Company, Inc. (AMSPEC), the licensee, had intentionally violated regulatory and license condition requirements set forth in 10 CFR Parts 20, 30, and 34 and the NRC license of January 15, 1987, respectively. According to reported allegations, licensee management officials had permitted unqualified technicians to perform radiography operations at the Hess Oil Virgin Islands Company (HOVIC) facility, St. Croix, U.S. Virgin Islands, which had contracted with AMSPEC for nondestructive examination services. Additionally, licensee officials allegedly: (1) discriminated (involuntary termination) against technicians for reporting radiation health and safety concerns, (2) falsified radiation safety training documents, (3) provided false and misleading information to the NRC, and (4) used source material in a manner not authorized by the license (irradiation of mice).

The Office of Investigations (OI) reviewed the circumstances of the alleged regulatory and license condition violations during which other improprieties by the licensee were identified. The investigation by OI did not substantiate that licensee management officials had terminated radiography technicians for reporting radiation health and safety concerns. It was concluded, however, that these licensee officials at the HOVIC facility appeared insensitive to employee concerns of all topics, including radiation safety, and they were perceived by technicians as acting with apparent disregard concerning this issue. The investigation further determined that licensee officials deliberately provided false and misleading radiation safety-related information to NRC representatives which was pertinent to the regulatory process. The investigation substantiated that the licensee, through actions of some radiation protection officers (RPOs), deliberately falsified radiation safety training records, inserted false records in technician files to give the impression required training was accomplished, and they also conspired to conceal these training deficiencies and improprieties from the NRC. The investigation surfaced and substantiated the allegation that licensee officials and RPOs deliberately falsified required personnel radiation safety audits and accompanying reports and they also created audit reports to make complete the radiation safety files of some technicians.

The investigation also disclosed and confirmed numerous instances of radiographers' assistants performing radiography without supervision and the deliberate falsification of source utilization logs to give the appearance that required supervision was present, all with the apparent knowledge and concurrence of licensee management officials. It was also determined during the investigation that licensee training officials (RPOs) frequently

failed to provide the Operation and Emergency Procedures (O&EP) Manual to new employees prior to source utilization. The investigation also determined that some licensee RPOs were not trained, examined, and certified according to Radiation Safety Program requirements and AMSPEC officials, including the radiation safety officer (RSO) and several RPOs, were aware of some of these violations and failed to correct them. Further, on at least one occasion, the RSO and an RPO conspired to concoct a plausible explanation for the NRC as to why RPO examination/certification requirements were violated.

The investigation substantiated the allegation that radioactive source material was utilized improperly when an AMSPEC night shift supervisor, in the presence of technicians, radiographed a mouse during two to three consecutive source exposures at the HOVIC facility. The OI investigation, and a previous NRC inspection at the St. Croix location, also revealed instances in which AMSPEC technicians failed to observe required surveying and posting activities during radiography operations, actions which demonstrated either an apparent disregard for regulations and/or radiation safety training deficiencies. Finally, the investigation disclosed that the RSO and other licensee management officials deliberately failed to perform required radiation safety review, evaluation, and oversight functions and responsibilities during the past 3 years.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 27, 1996

IA 96-018

Mr. Donald J. McDonald, Jr.
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)
(NRC OFFICE OF INVESTIGATIONS REPORT NO. 3-95-007)

Dear Mr. McDonald:

The enclosed Order is being issued as a result of an investigation by the NRC Office of Investigations (OI) which concluded that you deliberately provided incomplete and inaccurate information on applications you made for access authorization at Illinois Power Company's (licensee) Clinton Power Station. A copy of the OI Synopsis is enclosed. The Order prohibits your involvement in NRC-licensed activities, and your obtaining unescorted access to protected and vital areas of facilities licensed by the NRC, for a period of three years from the date of the Order. In addition, for your first acceptance of employment in NRC-licensed activities after the three year period of prohibition has expired, the Order requires you to notify the NRC of your acceptance of such employment and requires you to certify that you will comply with NRC requirements in engaging in such activities.

On March 22, 1994, you indicated on your background screening questionnaire for Clinton Power Station that you had not been arrested or convicted of a criminal offense other than a driving while under the influence (DWI) conviction. However, unescorted access was not pursued further at the time. You completed a second questionnaire on November 3, 1994, in which you listed no criminal history. After submitting your fingerprint cards to the Federal Bureau of Investigations, the licensee was informed that you had a criminal record of three convictions. Furthermore, it was learned that you had not achieved the educational level that you claimed in your application. 10 CFR 50.5(a)(2), "Deliberate Misconduct," prohibits an employee of a licensee contractor from deliberately submitting information to the licensee that the employee knows to be incomplete or inaccurate in some respect material to the NRC. The incomplete information you deliberately provided regarding your criminal history is a violation of 10 CFR 50.5(a)(2). Information concerning criminal history and educational history is material to the determination the licensee must make in granting or denying unescorted access pursuant to 10 CFR 73.56(b)(2).

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

During a telephone conversation with Paul Pelke, NRC Region III, on February 15, 1996, you declined an opportunity to participate in a predecisional enforcement conference on this matter. You are required to respond to this Order and should follow the instructions specified in Section V of the Order when preparing your response. Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosures will be placed in the NRC Public Document Room (PDR).

Sincerely,



James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations, and Research

Enclosures: As Stated

cc w/encl: The National Board of Boiler
and Pressure Vessel Inspectors
Commercial Union Contract Inspection
Services
R. Morgenstern, Plant Manager,
Clinton Power Station

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

Donald J. McDonald, Jr.

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IA 96-018

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Donald J. McDonald, Jr., was employed as an Authorized Nuclear In-service Inspector for Factory Mutual Engineering, which is owned by Arkwright Mutual Insurance Company, Inc., a contractor of the Illinois Power Company (Licensee). Licensee is the holder of License No. NPF-62 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on April 17, 1987. The license authorizes the operation of Clinton Power Station (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Clinton, Illinois.

II

Mr. McDonald first applied for unescorted access to the Clinton Power Station by completing a background screening questionnaire on March 22, 1994. In response to a question on the questionnaire as to whether he had ever been convicted of a felony or misdemeanor, he listed one driving while under the influence conviction (DWI). However, unescorted access was not pursued further at the time. Mr. McDonald completed a second background screening questionnaire on November 3, 1994, in which he listed no criminal history in

response to the same question. Subsequently, the Licensee submitted fingerprint cards to the Federal Bureau of Investigations (FBI) and was informed that Mr. McDonald had a record of three convictions. Illinois Power Company denied Mr. McDonald unescorted access to the Clinton Power Station. The investigation also determined that Mr. McDonald had falsified his educational record.

The NRC Office of Investigations conducted a transcribed interview of Mr. McDonald on November 30, 1995. When asked by the NRC Investigator about the failure to list the convictions on the background screening questionnaires, Mr. McDonald admitted that he knowingly provided inaccurate and incomplete information.

III

Based on the above, Mr. McDonald engaged in deliberate misconduct on March 22, 1994, and November 3, 1994, in that he deliberately provided incomplete and inaccurate information on two different access authorization applications. The Commission's regulations in 10 CFR 50.5, in part, prohibit any employee of a contractor of a licensee from deliberately submitting to the licensee information that the employee knows to be incomplete or inaccurate in some respect material to the NRC. Information concerning criminal history and educational history is material to the determination the licensee must make in granting or denying unescorted access to its facility pursuant to 10 CFR 73.56(b)(2). Mr. McDonald's actions constituted a violation of 10 CFR 50.5(a).

The NRC must be able to rely on the Licensee, its contractors, and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. McDonald's actions in deliberately providing incomplete and inaccurate information to the Licensee constituted deliberate violations of Commission regulations and raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. McDonald were permitted at this time to be involved in NRC-licensed activities or were permitted unescorted access to protected or vital areas of NRC-licensed facilities. Therefore, the public health, safety and interest require that Mr. McDonald be prohibited from any involvement in NRC-licensed activities and be prohibited from obtaining unescorted access for a period of three years from the date of this Order and, if Mr. McDonald is currently involved with an employer in NRC-licensed activities, he must immediately cease such activities, inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, for his first acceptance of an employment offer involving NRC-licensed activities or the assumption of duties in an existing job involving NRC-licensed activities following the three year period of prohibition, Mr. McDonald shall provide notice to the NRC within 20 days of the acceptance of the name, address, and telephone number of the employer or the entity where he is, or

will be, involved in the NRC-licensed activities, and certify that he will comply with NRC regulatory requirements in such employment. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. McDonald's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. (a) Mr. Donald J. McDonald, Jr., is prohibited from engaging in NRC-licensed activities and from obtaining unescorted access to protected and vital areas of facilities licensed by the NRC for a period of three years from the date of this Order. For the purposes of this Order, licensed activities include the activities licensed or regulated by: (1) NRC; (2) an Agreement State, limited to the licensee's conduct of activities within NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State where the licensee is involved in the distribution of products that are subject to NRC jurisdiction.

(b) If Mr. McDonald is currently involved in NRC-licensed activities with an employer, he shall immediately cease such activities, inform the

NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

2. Following the three year period of prohibition, at the time of his first acceptance of an employment offer involving NRC licensed activities as defined in Paragraph IV.1 above, or the first assumption of duties in an existing job that involve licensed activities, Mr. McDonald shall provide notice to the NRC within 20 days of the acceptance or assumption of duties of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. This notice (a) shall be provided to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, and (b) shall certify Mr. McDonald's commitment to compliance with regulatory requirements and provide the basis as to why the Commission should have confidence that Mr. McDonald will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. McDonald of good cause.

V

In accordance with 10 CFR 2.202, Mr. McDonald must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time

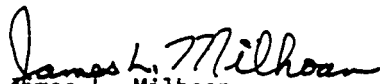
to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. McDonald or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532-4351, and to Mr. McDonald if the answer or hearing request is by a person other than Mr. McDonald. If a person other than Mr. McDonald requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. McDonald or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. McDonald, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations, and Research

Dated at Rockville, Maryland
this 27th day of March 1996



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 24, 1997

IA 97-001
Mr. Darryl D. McNeil
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. McNeil:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because of your deliberate misconduct in violation of 10 CFR 50.5 of the Commission's regulations. Specifically, on February 9, 1996, you deliberately conspired to cover up the loss of control of a security badge at Florida Power Corporation's Crystal River site. Based on your actions, the Order prohibits your involvement in NRC-licensed activities for a period of one year and requires your notification of the NRC of your first involvement in NRC-licensed activities for one year following the prohibition period.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room (PDR).

Sincerely,

Edward L. Jordan
Deputy Executive Director
for Regulatory Effectiveness,
Program Oversight, Investigations
and Enforcement

Enclosure: Order Prohibiting Involvement
in NRC Licensed Activities

D. McNeil

cc w/enc1 [HOME ADDRESS DELETED]:

Florida Power Corporation
Mr. Roy Anderson (SA2A)
Sr. VP, Nuclear Operations
15760 West Power Line Street
Crystal River, FL 34428-6708

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

)
)

IA 97-001

DARRYL D. MCNEIL

)

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Darryl D. McNeil was employed by SBI as a Security Lieutenant at Florida Power Corporation's (FPC) Crystal River site. SBI is a contractor to FPC and provides security services for the site. FPC holds License No. DPR-72 for Crystal River Unit 3, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on January 28, 1977. The license authorizes FPC to operate Crystal River Unit 3 in accordance with the conditions specified therein.

II

10 CFR 73.55(d) requires, in part, that nuclear power plant licensees control all points of personnel access into a protected area. 10 CFR 73.55(d)(5) requires that a numbered picture badge identification system be used for all individuals who are authorized access to protected areas without escort. The objective of the regulation is to provide high assurance that only individuals who require access and have been found to be trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public are allowed to enter the protected area. The Crystal River Unit 3 Operating License Section 2.D, Physical Security, requires FPC to maintain in effect all provisions of the

Commission-approved Physical Security Plan. FPC's Physical Security Plan, Revision 6-9, Section 5.4.3 states: "When badges/key cards are allowed to leave the Protected Area, they will be under the observation and control of Security Force personnel. ...Lost and missing badges/key cards are immediately removed from the Security Computer as soon as Security Supervision is made aware of the loss. Prior to removal from the Security Computer, an investigation is conducted to determine any unauthorized use."

On February 9, 1996, a Quality Assurance employee at Crystal River Unit 3 left the site while wearing his security badge. During the period of March 6, 1996, through December 13, 1996, the Nuclear Regulatory Commission (NRC) Office of Investigations (OI) conducted an investigation of the circumstances surrounding the loss of control of the security badge at the Crystal River site. From its investigation, the NRC concludes that contract security employees intentionally and deliberately conspired to cover up the loss of the security badge. Specifically, the evidence revealed that, prior to the return of the employee to the site, two security officers became aware that this event had occurred, and notified their supervisor, Darryl D. McNeil, of the event. Although Mr. McNeil admitted to the OI investigator that he was aware of the requirements to deactivate a missing badge in the security access computer, and to initiate an investigation upon being informed of the mistake, he did not comply with these requirements. Instead, he permitted the security officers: (1) to retrieve the individual's badge when he returned to the site later that day; (2) to card the badge out as if it had been processed properly upon the individual's exit from the plant; and (3) to return the badge to the badge rack.

On January 16, 1997, the NRC sent a certified letter to Mr. McNeil advising him that his actions appeared to have violated 10 CFR 50.5, Deliberate Misconduct, and offering him the opportunity to attend a predecisional enforcement conference. By letter dated February 10, 1997, Mr. McNeil provided a written response to the January 16, 1997, letter in lieu of participation in an enforcement conference. Mr. McNeil's letter indicated that he was aware an employee had left the facility with his badge and that he had been informed that the security officer planned to retrieve the badge and return it to the badge rack. Mr. McNeil stated that in his judgement, these actions posed no security risk to the plant.

III

Based on the above, it appears that Mr. McNeil engaged in deliberate misconduct in that, although he was aware of badge security requirements, he deliberately allowed security officers to improperly retrieve, card out, and return a badge which had been taken off-site to the badge rack, and deliberately failed to remove the employee's badge from the security access computer or initiate an investigation of the incident. These actions were not authorized by plant procedures. Mr. McNeil's deliberate misconduct caused the Licensee to be in violation of Section 5.4.3 of its Physical Security Plan and is, therefore, a violation of 10 CFR 50.5(a)(1). The NRC must be able to rely on licensees, contractors and their employees to fully comply with NRC requirements. This is essential with respect to access authorization programs at nuclear power plants because the NRC relies on members of a nuclear facility's security force to ensure that all individuals who are allowed to access the facility meet high

standards of trustworthiness and reliability. Mr. McNeil's deliberate misconduct raises serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that the health and safety of the public will be protected if Mr. McNeil were permitted at this time to be involved in NRC-licensed activities. Therefore, public health and safety and the public interest require that Mr. McNeil be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order and, if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. McNeil is required to notify the NRC of his first employment in NRC-licensed activities for one year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. McNeil's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. Darryl D. McNeil is prohibited for one year from the date of this Order from engaging in or exercising control over individuals engaged in NRC-licensed activities. If Mr. McNeil is currently involved in NRC licensed activities, he must immediately cease such activities, inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
- B. For a period of one year following the period of prohibition set forth in Paragraph IV.A. above, Mr. Darryl D. McNeil shall, within 20 days of his acceptance of his first employment offer involving NRC-licensed activities as defined in Paragraph IV.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon demonstration by Mr. McNeil of good cause.

In accordance with 10 CFR 2.202, Mr. McNeil must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. McNeil or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323 and to Mr. McNeil if the answer or hearing request is by a person other than Mr. McNeil. If a person other than Mr. McNeil requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. McNeil or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. McNeil, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program
Oversight, Investigations and Enforcement

Dated at Rockville, Maryland
this 24th day of March 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 18, 1997

IA 97-012

Mr. James Mulkey
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Mulkey:

The enclosed Order, effective immediately, is being issued to you as a result of the findings of an NRC inspection conducted on December 2-3, 1993, and an investigation by the NRC Office of Investigations (OI), initiated in 1993 which found that you engaged in deliberate misconduct with respect to NRC-licensed activities while you were Vice President and Radiation Safety Officer of Power Inspection, Inc., (PI).

The Order prohibits you for five years from any involvement in NRC-licensed activities, and afterwards, requires that you notify the NRC the first time that you engage in NRC-licensed activities. Further, the Order requires you to provide a written answer within 20 days.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to a civil monetary penalty.

In addition, the NRC is issuing a \$40,000 civil penalty to PI (see Enclosure 2) on this date based, in part, on your actions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

Mr. James Mulkey

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room.

Sincerely,



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Enclosures:

1. Order Prohibiting Involvement in NRC-Licensed Activities
(Effective Immediately)
2. Notice of Violation and Proposed Imposition of Civil Penalties

cc w/encls:

Commonwealth of Pennsylvania
State of Florida

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
James L. Mulkey

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IA 97-012

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

James L. Mulkey (Mr. Mulkey) was employed as Vice President by Power Inspection, Inc. (PI or Licensee), and was identified on PI's NRC license as the Radiation Safety Officer (RSO) for PI. PI is the holder of Byproduct License No. 37-21428-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The License authorizes the Licensee to use iridium-192 and cobalt-60 sealed sources for the performance of industrial radiography at its facility in Wexford, Pennsylvania, as well as at temporary job sites. The License was most recently renewed on January 31, 1989, and expired on January 31, 1994. In addition, the Licensee submitted a request, dated December 30, 1993, that the license be terminated. Action on that request has been held in abeyance pending further NRC review.

In addition, PI acted as a vendor supplying services to licensees of nuclear power plants, including the performance of nondestructive testing services, such as eddy current testing (ET). Such services were provided to the licensees of Perry and Cooper nuclear power plants in 1993.

On December 2 and 3, 1993, the NRC performed an inspection at the Licensee's Wexford facility of activities conducted under the License. During that inspection, the NRC found numerous violations of NRC requirements. The violations included: the failure of the RSO named on the License to perform required duties; the failure to conduct quarterly audits of all radiographers; the failure to provide the required annual refresher training to the radiographers; the failure to perform, at the required frequency, the required inspection and maintenance on the exposure device (camera) containing an iridium-192 source; the failure to perform leak tests of the sealed sources at the required frequency; the failure to promptly collect and submit film badges for processing; and the failure to maintain radiography utilization logs.

On December 2, 1993, an NRC investigation was also initiated by the NRC Office of Investigations (OI). During its investigation, OI concluded that:

- a. with respect to the materials license, responses in PI's response letter dated July 14, 1993, to the NRC were deliberately incomplete and inaccurate, and the President and former RSO were responsible for providing this false information to the NRC. Specifically, the inaccurate information provided to the NRC was in response to a previous Notice of Violation issued to the Licensee on June 16, 1993, for numerous violations identified during an NRC inspection conducted in April 1993.

In a response, signed by Mr. Mulkey, to the violations listed in the June 16, 1993 Notice of Violation, the licensee stated that:

(1) observations of the licensee's radiographers had been made when, in fact, the observations had not been made; (2) a ratemeter had been sent for calibration, when, in fact, the ratemeter had not been sent; (3) pocket dosimeters had been calibrated, when, in fact, the dosimeters had not been calibrated; (4) source utilization logs had been maintained, when, in fact, the logs had not been maintained; (5) personnel monitoring reports were available, when, in fact, the reports had not been available.

- b. with respect to the vendor-related activities, false ET qualification certifications were deliberately generated by PI for at least three employees who performed ET examinations at Perry and Cooper nuclear power plants during 1993 and ET qualification certification examination results and Personnel Certification Summaries were generated for four employees, and these falsifications were condoned or directed by the former President, former Vice President/RSO (i.e., Mr. Mulkey), and the former Quality Assurance Manager.

In addition, Mr. Mulkey deliberately provided false information to the NRC during a December 2, 1993 telephone discussion with a representative of the NRC in that Mr. Mulkey stated he was the RSO, and that in September of 1993 he had visited the Wexford office and executed the duties of an RSO. These statements were false in that: (1) interviews with PI employees established that Mr. Mulkey had not visited the Wexford office during 1993, and they were

not aware of Mr. Mulkey performing any audits related to radiographic operations out of the Wexford office; and (2) Mr. Mulkey indicated during the predecisional enforcement conference on October 2, 1996, that he left the position of RSO for the Wexford facility at the end of 1992 to work in Florida. However, during the conference, Mr. Mulkey also indicated that at the time he responded to the NRC in the July 14, 1993 letter, he was the RSO and was responsible for compliance with the license.

III

Based on the above, Mr. Mulkey, former Vice President and RSO of PI, a licensee of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), which caused PI to be in violation of 10 CFR 30.9(a). Specifically, as a result of Mr. Mulkey's actions, PI violated 10 CFR 30.9(a) by providing to the NRC a letter dated July 14, 1993, which contained inaccurate information relating to whether corrective actions had been taken in response to violations listed in an NRC Notice of Violation dated June 16, 1993. Mr. Mulkey also engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2) by deliberately providing false information to the NRC during the December 2, 1993 telephone discussion with a representative of the NRC. Specifically, Mr. Mulkey stated he was the RSO, and that in September of 1993 he had visited the Wexford office and executed the duties of an RSO.

Moreover, Mr. Mulkey, an employee of PI, a contractor to licensees of the NRC, engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(2), by deliberately submitting in March and in October 1993 to the Cleveland Electric

Illuminating Company (CEIC) and Nebraska Public Power District (NPPD), both licensees of the NRC, ET qualification certification examination results and Personnel Certification Summaries which were inaccurate.

The NRC must be able to rely on its licensees and their employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Mulkey's actions in causing the Licensee to be in violation of NRC requirements and in deliberately violating NRC requirements have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to both the NRC and NRC licensees.

Consequently, I lack the requisite reasonable assurance that information provided to the NRC by Mr. Mulkey, or records required to be maintained by the Licensee, will be complete and accurate in all material respects if Mr. Mulkey were permitted to be involved in any NRC-licensed activities. I also lack the requisite assurance that NRC-licensed activities will be conducted safely or in accordance with NRC requirements or that the health and safety of the public will be protected if Mr. Mulkey were involved in NRC-licensed activities. In addition, I find that Mr. Mulkey is either unable or unwilling to assure that NRC requirements are being and will be followed.

Therefore, I find that the public health, safety, and interest require that Mr. Mulkey be prohibited from involvement in NRC-licensed activities for five years from the date of this Order, and if he is currently engaged in

NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the misconduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 57, 62, 81, 103, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 30.10, 50.5, and 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. James L. Mulkey is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include the licensed activities of: (1) an NRC licensee; (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State licensee involved in the distribution of products that are subject to NRC jurisdiction. In addition, if Mr. Mulkey is currently engaged in NRC-licensed activities with another NRC licensee, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer.
- B. The first time that Mr. Mulkey engages in an NRC-licensed activity following the five year prohibition, he shall notify the Director,

Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, at least five days prior to the performance of the licensed activity or his being employed to perform NRC-licensed activities (as described in A. above). The notice shall include the name, address, and telephone number of the employer or the entity where he will be involved in the NRC-licensed activity. In the notification, Mr. Mulkey shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement (OE), may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Mulkey of good cause.

V

In accordance with 10 CFR 2.202, Mr. Mulkey must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order, and shall set forth the matters of fact and law on which Mr. Mulkey or other

person adversely affected relies, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to Mr. Mulkey if the answer or hearing request is by a person other than Mr. Mulkey. If a person other than Mr. Mulkey requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Mulkey or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Mulkey or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Dated at Rockville, Maryland
this 11th day of February 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 27, 1997

IA 97-004

Mr. James C. Nelson
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Nelson:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 of the Commission's regulations. Specifically, you deliberately permitted use of a portable moisture density gauge containing NRC-licensed material while under an October 24, 1995, Order Suspending License (Effective Immediately) prohibiting such use causing the licensee to be in violation of 10 CFR 30.34. Further, you deliberately provided information to the NRC regarding the identity of the Radiation Protection Officer on your license that you knew was inaccurate. Based on your deliberate actions, the Order prohibits your involvement in NRC-licensed activities for a period of five years.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2273, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room (PDR).

Sincerely,

A handwritten signature in dark ink, appearing to read "E. L. Jordan", written over a horizontal line.

Edward L. Jordan, Deputy Executive
Director for Regulatory Effectiveness,
Program Oversight, Investigations
and Enforcement

Enclosure: Order Prohibiting Involvement
in NRC Licensed Activities
(Effective Immediately)

cc w/enc [HOME ADDRESS DELETED]:
State of West Virginia

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
James C. Nelson

)
)
)

IA 97-004

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. James C. Nelson owns and operates Nelson Excavating, Inc. in Thomas, West Virginia. Nelson Excavating, Inc. (Licensee) holds By-product License No. 47-24923-02, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License was initially issued on June 24, 1987, and last renewed on September 17, 1992. The License authorizes the Licensee to use a Troxler Electronic Model 3400 series portable moisture density gauge for soil compaction measurements in accordance with the conditions specified therein. The License was extended for a period of five years on March 1, 1996, and will expire on September 30, 2002. On August 15, 1996, the Licensee discontinued licensed activities and transferred its gauge containing nominally 11 millicuries (mCi) of Cesium-137 and 44 mCi of Americium-241 to an authorized recipient. On August 15, 1996, the Licensee formally requested termination of its NRC License. The License is being terminated separately in accordance with this request.

II

On October 24, 1995, the NRC's Office of the Controller issued an Order Suspending License (Effective Immediately) to Nelson Excavating, Inc. suspending its License for the non-payment of fees in the amount of \$2873.48,

including late penalties of \$753.48. The Order required, among other things, that the Licensee immediately restrict its activities involving licensed material to safe, secure storage or appropriate disposal until notified by the NRC in writing that the License had been terminated. The Order became final on November 24, 1995, following the Licensee's failure to respond to the NRC or pay the fees within the 30 days specified in the Order.

During the period March 19 through April 1, 1996, NRC Region II conducted a special safety inspection of licensed activities to determine the status of the gauge and compliance with the October 24, 1995 Order. The inspection determined the following: (1) The Licensee used the gauge containing by-product material on November 6, 1995, and January 4, 1996, contrary to the requirements of the October 24, 1995, Order; (2) The Licensee was using a different Radiation Protection Officer than that identified in Condition 11 of the License. The Licensee also represented to the NRC in a letter, dated September 17, 1992, that the individual named in the License was still acting as Radiation Protection Officer, when in fact the individual was not, contrary to the requirements of 10 CFR 30.9; and (3) The Licensee failed to test the licensed material for leakage at the required frequency contrary to Condition 14 of the License.

On May 15, 1996, NRC Region II management contacted the Licensee to discuss compliance with the October 24, 1995 Order. Mr. Nelson indicated that his licensed material had been used for the work conducted on November 6, 1995, and January 4, 1996, under another license and not that issued to Nelson

Excavating, Inc. Additionally, he affirmed that he understood the provisions of the Order that the gauge was to be placed in storage and not used.

On June 11, 1996, a Demand for Information (DFI) was issued to the Licensee in order to obtain a written response regarding the two apparent uses of licensed material and the potential submittal of inaccurate information to the NRC on September 17, 1992. The Licensee's response was due on July 11, 1996.

Since the licensee was unresponsive to NRC's request in the DFI and numerous telephone inquiries, NRC Region II conducted another inspection at the Licensee's facility in Thomas, West Virginia, on August 14 and 15, 1996. During that inspection, eleven additional uses of the Licensee's gauge after issuance of the Order were identified through a review of gauge utilization records. Ten of the uses occurred following the May 15, 1996, discussions between NRC Region II and the Licensee confirming the Licensee's understanding of the Order. As a result of this inspection, the Licensee transferred the gauge to an authorized recipient and documented the transfer appropriately on August 15, 1996.

As a result of the NRC inspection and prompting by the NRC, the Licensee also submitted a written response to the DFI on August 15, 1996. The response admitted that the gauge was used on 13 occasions during the prohibition period. As an explanation, Mr. Nelson stated that he had reading and comprehension difficulties, and following his March 19, 1996, payment of backfees and receipt of a March 1, 1996, notice from NRC extending his license until September 30, 2002, he felt that he could use his license material. In

addition, he stated that he paid for it [the gauge], he owned it, and would use it accordingly. The DFI response further provided statements by two employees of the Licensee that they had not been instructed by Mr. Nelson not to use the gauge.

By letter, dated September 25, 1996, the Licensee and Mr. Nelson were requested to attend a predecisional enforcement conference to discuss the apparent violations, their root causes, and the corrective actions to preclude recurrence. As of the date of this Order, NRC has not received any response from Mr. Nelson, despite numerous attempts to contact him. Contact with the Office Manager for Nelson Excavating, Inc, however, indicated that due to personal problems, Mr. Nelson did not intend to respond.

Despite the lack of a response to NRC's September 25, 1996, letter, based on the information gathered during the inspections and in the response to the DFI, the following was concluded regarding Mr. Nelson's activities: (1) he deliberately provided information that he knew was inaccurate to the NRC regarding the identity of the Radiation Protection Officer in a September 17, 1992, letter; and (2) he deliberately permitted the use of the gauge containing licensed material on 13 occasions during the period that use of the gauge was prohibited by the October 24, 1995 Order. In addition, Mr. Nelson has failed to respond to numerous requests from the NRC regarding oversight of his NRC license. This failure caused the NRC to perform two onsite inspections to assure licensed activities were conducted in accordance with NRC regulations.

Based on the above, it appears that James C. Nelson, the owner and operator of the Nelson Excavating, Inc., has engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), in that he deliberately caused the Licensee to be in violation of 10 CFR 30.34 (a), Terms and Conditions of License, by permitting the use of the gauge containing licensed material on 13 occasions following the October 24, 1995 Order prohibiting use of the gauge, and in violation of 10 CFR 30.10(a)(2) in that he deliberately submitted information to the NRC regarding the identify of the RPO in a September 17, 1992 letter that he knew was inaccurate. Mr. Nelson's disregard for and failure to adhere to NRC regulations and an Order strongly suggests a lack of integrity which cannot be tolerated. As owner and operator of Nelson Excavating, Inc., Mr. Nelson was responsible for ensuring that Nelson Excavating, Inc. conducted activities safely and in accordance with NRC requirements and the October 24, 1995, Order. The NRC must be able to rely on the Licensee, its officials, and employees to comply with NRC requirements and the terms of NRC Orders prohibiting the use of licensed materials, and to communicate to the NRC with candor and honesty.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Nelson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Nelson be prohibited from any oversight of or involvement in NRC-licensed activities for

a period of five years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nelson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. For a period of five years from the date of this Order, James C. Nelson is prohibited from any involvement in or exercising control over NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.
- B. Following the five-year period of prohibition outlined in Section IV.A above, at least five days prior to the first time that James C. Nelson engages in, or exercises control over, NRC-licensed activities, he shall

notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement that James C. Nelson is committed to compliance with NRC requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Nelson of good cause.

V

In accordance with 10 CFR 2.202, James C. Nelson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which James C. Nelson or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be

submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street N.W., Suite 2900, Atlanta, GA 30323, and to James C. Nelson if the answer or hearing request is by a person other than James C. Nelson. If a person other than James C. Nelson requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

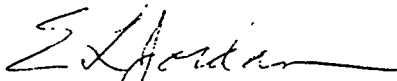
If a hearing is requested by James C. Nelson or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), James C. Nelson, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV

above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Edward L. Jordan, Deputy Executive
Director for Regulatory Effectiveness,
Program Oversight, Investigations
and Enforcement

Dated at Rockville, Maryland
this 27th day of January 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

AUG 26 1994

IA 94-018

Richard E. Odegard
(HOME ADDRESS DELETED
UNDER 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of 10 CFR 30.10 of the Commission's regulations as described in the Order.

Based on an investigation conducted by the Nuclear Regulatory Commission's Office of Investigation, the NRC Staff has determined that you deliberately conspired with other AMSPEC officials to deceive the Commission and provided false testimony, under oath, to NRC officials. In addition, you deliberately failed to train and certify employees in radiation safety as required by the AMSPEC license conditions. A copy of the synopsis of the investigation is enclosed.

Failure to comply with the provisions of this Order may result in further civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature of James Lieberman in cursive script.

James Lieberman, Director
Office of Enforcement

Enclosures:

1. Order
2. OI Synopsis

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Richard E. Odegard

)
)
)
)

IA 94-018

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Richard E. Odegard has been employed as a radiographer in the field of industrial radiography since approximately 1978. On approximately June 20, 1989, Mr. Odegard was hired by the American Inspection Company, Inc. (AMSPEC). AMSPEC held Materials License No. 12-24801-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. This license authorized the conduct of industrial radiography activities in accordance with specified conditions. On April 30, 1992, the license was suspended as a result of significant safety violations and related safety concerns. Mr. Odegard was a Vice-President of AMSPEC at the time of license suspension.

II

Between August 22, 1991 and November 12, 1992, the NRC Office of Investigations conducted an investigation of licensed activities at AMSPEC. During the course of this investigation, the AMSPEC license was suspended when a significant number of safety violations were identified. In addition, the investigation revealed that Mr. Odegard, in his capacity as a Vice-President and Area Manager for AMSPEC, conspired with other AMSPEC officials to deceive

the Commission regarding training of employees and, in addition, deliberately provided false sworn testimony to NRC officials.

AMSPEC submitted a Radiation Safety Manual as a part of its license application dated September 20, 1986. A part of this manual refers to employee training to satisfy the requirements of Appendix A of 10 CFR Part 34. This manual was incorporated as a part of License Condition 17 of the AMSPEC license. 10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee, and information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects. 10 CFR 30.10(a) requires, in part, that any licensee or any employee of a licensee may not: (1) engage in deliberate misconduct that causes a licensee to be in violation of any rule, regulation, or limitation of any license, issued by the Commission, or (2) deliberately submit to the NRC information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Between late 1989 and March 1, 1992, Mr. Odegard deliberately created false documents concerning the training of AMSPEC employees (documents that were required by the Commission's regulations to be maintained by AMSPEC), causing a violation of 10 CFR 30.9 by AMSPEC. During 1990 and 1991, Mr. Odegard deliberately provided unauthorized and improper aid to AMSPEC employees taking radiation safety examinations, a violation of License Condition 17. Between late 1989 and the end of 1991, Mr. Odegard deliberately falsified records of quarterly personnel radiation safety audits, causing violations of 10 CFR 30.9 and 34.11(d). On April 13, 1993, Mr. Odegard deliberately provided false

testimony under oath during the NRC investigation, a violation of 10 CFR 30.10.

On January 29, 1993, Mr. Odegard pled guilty to one felony count involving deliberate violations of the Atomic Energy Act based on his violations of these requirements.

III -A-

Based on the above, Mr. Odegard engaged in deliberate misconduct which caused AMSPEC to be in violation of the training requirements of License Condition 17 and NRC regulations, including 10 CFR 30.9 and 34.11(d). The NRC must be able to rely on licensees and their employees to comply with NRC requirements, including the requirements to train and certify employees in radiation safety and procedures and the requirement to provide information that is complete and accurate in all material respects. Mr. Odegard's actions in deliberately causing AMSPEC to be in violation of NRC requirements regarding training and completeness and accuracy of information and his deliberate misrepresentations to NRC officials in violation of 10 CFR 30.10 have raised serious doubt as to whether he can be relied on to comply with NRC requirements, specifically the requirement to provide complete and accurate information to the NRC.

Mr. Odegard's deliberate misconduct, including his false statement to Commission officials, cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Odegard

were permitted at this time to supervise or perform licensed activities in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. Odegard be prohibited from engaging in NRC licensed activities (including supervising, training or auditing) for either an NRC licensee or an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of five years from the date of this Order. In addition, for a period of five years commencing after completion of the five-year period of prohibition, Mr. Odegard is required to notify the NRC of his employment by any person or entity engaged in NRC-licensed activities, to ensure that the NRC can monitor the status of Mr. Odegard's compliance with the Commission's requirements and his understanding of his commitment to compliance. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this order be effective immediately.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Richard E. Odegard is prohibited for five years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those

activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. During this time period, Mr. Odegard must also provide a copy of this Order to prospective employers who engage in NRC-licensed activities, at the time he accepts employment.

2. For a period of five years after the five-year period of prohibition has expired, Richard E. Odegard shall, within 20 days of his acceptance of an employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification Mr. Odegard shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may in writing, relax or rescind any of the above conditions upon demonstration by Mr. Odegard of good cause.

V

In accordance with 10 CFR 2.202, Richard E. Odegard must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order.

The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Richard E. Odegard or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, N. W., Suite 2900, Atlanta, Georgia 30323, and to Richard E. Odegard if the answer or hearing request is by a person other than Richard E. Odegard. If a person other than Richard E. Odegard requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Richard E. Odegard or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Richard E. Odegard or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order,

including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or processing. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 26th day of August 1994

SYNOPSIS

On August 22, 1991, the Regional Administrator, U.S. Nuclear Regulatory Commission (NRC), Region II, requested an investigation to determine whether officials, managers, and/or employees of The American Inspection Company, Inc. (AMSPEC), the licensee, had intentionally violated regulatory and license condition requirements set forth in 10 CFR Parts 20, 30, and 34 and the NRC license of January 15, 1987, respectively. According to reported allegations, licensee management officials had permitted unqualified technicians to perform radiography operations at the Hess Oil Virgin Islands Company (HOVIC) facility, St. Croix, U.S. Virgin Islands, which had contracted with AMSPEC for nondestructive examination services. Additionally, licensee officials allegedly: (1) discriminated (involuntary termination) against technicians for reporting radiation health and safety concerns, (2) falsified radiation safety training documents, (3) provided false and misleading information to the NRC, and (4) used source material in a manner not authorized by the license (irradiation of mice).

The Office of Investigations (OI) reviewed the circumstances of the alleged regulatory and license condition violations during which other improprieties by the licensee were identified. The investigation by OI did not substantiate that licensee management officials had terminated radiography technicians for reporting radiation health and safety concerns. It was concluded, however, that these licensee officials at the HOVIC facility appeared insensitive to employee concerns of all topics, including radiation safety, and they were perceived by technicians as acting with apparent disregard concerning this issue. The investigation further determined that licensee officials deliberately provided false and misleading radiation safety-related information to NRC representatives which was pertinent to the regulatory process. The investigation substantiated that the licensee, through actions of some radiation protection officers (RPOs), deliberately falsified radiation safety training records, inserted false records in technician files to give the impression required training was accomplished, and they also conspired to conceal these training deficiencies and improprieties from the NRC. The investigation surfaced and substantiated the allegation that licensee officials and RPOs deliberately falsified required personnel radiation safety audits and accompanying reports and they also created audit reports to make complete the radiation safety files of some technicians.

The investigation also disclosed and confirmed numerous instances of radiographers' assistants performing radiography without supervision and the deliberate falsification of source utilization logs to give the appearance that required supervision was present, all with the apparent knowledge and concurrence of licensee management officials. It was also determined during the investigation that licensee training officials (RPOs) frequently

failed to provide the Operation and Emergency Procedures (O&EP) Manual to new employees prior to source utilization. The investigation also determined that some licensee RPOs were not trained, examined, and certified according to Radiation Safety Program requirements and AMSPEC officials, including the radiation safety officer (RSO) and several RPOs, were aware of some of these violations and failed to correct them. Further, on at least one occasion, the RSO and an RPO conspired to concoct a plausible explanation for the NRC as to why RPO examination/certification requirements were violated.

The investigation substantiated the allegation that radioactive source material was utilized improperly when an AMSPEC night shift supervisor, in the presence of technicians, radiographed a mouse during two to three consecutive source exposures at the HOVIC facility. The OI investigation, and a previous NRC inspection at the St. Croix location, also revealed instances in which AMSPEC technicians failed to observe required surveying and posting activities during radiography operations, actions which demonstrated either an apparent disregard for regulations and/or radiation safety training deficiencies. Finally, the investigation disclosed that the RSO and other licensee management officials deliberately failed to perform required radiation safety review, evaluation, and oversight functions and responsibilities during the past 3 years.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 16, 1996

IA 96-043

Mr. Jesus Osorio
[HOME ADDRESS DELETED
UNDER 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES

Dear Mr. Osorio:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued because of your deliberate misconduct, in violation of 10 CFR 30.10 of the Commission's regulations, as described in the Order. The Order becomes effective in 20 days unless a hearing is requested within this time.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order, once it becomes effective, shall be subject to criminal prosecution as set forth in that section. Failure to comply with the provisions of this Order may also result in civil sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,

A handwritten signature in cursive script, reading "Hugh L. Thompson, Jr.", is written over the typed name and title.

Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Material Safety, Safeguards
and Operations Support

Enclosure: Order Prohibiting Involvement
in NRC-Licensed Activities

cc: Commonwealth of Puerto Rico

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)

Jesus N. Osorio)
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.790]

IA 96-043

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES

I

Jesus N. Osorio was employed as the Radiation Safety Officer (RSO) of NDT Services, Inc. (NDTS or Licensee) in Caguas, Puerto Rico, in 1993. NDTS holds License No. 52-19438-01, issued to the Licensee in 1987 and last amended by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30, on March 9, 1995. The license authorizes industrial gamma ray radiography in accordance with the conditions specified therein. Mr. Osorio was identified in consecutive amendments to NRC License No. 52-19438-01, dated January 12, 1992 and October 26, 1993, and in other licensing correspondence, as the RSO for NDTS.

II

On December 16-17, 1993, a special inspection of NDTS' activities was conducted at the Licensee's facility in Caguas, Puerto Rico, in response to notifications received in the NRC Region II office that on September 4, 1993, two contract radiographers¹ employed by NDTS had been unable to return a radiography source to its shielded position following radiographic operations,

¹ The radiographers involved in the event were contracted by NDTS from National Inspection and Consultants (NIC), an Agreement State licensee in Florida. While no written contract was established to outline the scope and conditions of work, based on the information available, the NRC concluded that the work performed on September 4, 1993, was performed under the provisions of the NDTS license.

which resulted in the evacuation of the Sun Oil Company refinery located in Yabucoa, Puerto Rico, for several hours. Based on the results of the inspection, an investigation was initiated by the NRC Office of Investigations (OI) on December 30, 1993.

On December 21, 1995, OI completed its investigation and concluded, in part, that: (1) NDTs, with the knowledge and approval of the former RSO and former President, deliberately utilized radiographers untrained in NDTs operating and emergency procedures; and (2) NDTs, through the actions of the former RSO, provided the NRC with documentation that falsely certified the radiographers' training.

During an August 31, 1995 interview with OI, Mr. Osorio stated that he was aware that the radiographers needed training and that they were required to pass a proficiency test prior to working at the Sun Oil Company refinery. Mr. Osorio added that, prior to hiring the radiographers, he informed NDTs' former President that the radiographers would have to be trained and tested on NDTs equipment. Nonetheless, Mr. Osorio did not train the radiographers because they left for their accommodations and he was tired and went home, although he knew that they would work their shift without the required training. As to the false training documentation, Mr. Osorio stated that he knew he signed false documentation and that such falsification constituted a violation of NRC regulations, but he signed the documentation because he "needed to have something."

Based on the OI conclusions, the NRC further concluded that during the December 16-17, 1993 inspection, the former RSO orally represented to an NRC inspector that he demonstrated the safe use of the NDTs radiography equipment prior to allowing two contract radiographers to operate the equipment on September 3, 1993, when he knew that he had not conducted such a demonstration.

On February 15, 1996, Mr. Osorio was contacted by telephone and initially informed of the inspection and investigation results and was provided the opportunity to participate in a predecisional enforcement conference. During this telephone conversation, Mr. Osorio declined to attend this conference. By letter dated February 20, 1996, Mr. Osorio was transmitted the Inspection Report and the synopsis of the OI investigation and again offered the opportunity to attend a conference. To date, Mr. Osorio has not responded to the February 20, 1996 letter. No conference has been conducted with him; however, on May 16, 1996, a teleconference was conducted with Mr. Osorio to further discuss this case. Additionally, on February 29 and March 4, 1996, predecisional enforcement conferences were conducted with one of the contract radiographers, and NDTs, respectively.

Based on the information gathered during the inspection, investigation, predecisional enforcement conferences, and subsequent interviews in this case, the NRC has determined that: (1) Mr. Osorio deliberately permitted unqualified radiographers to perform radiography for NDTs on September 4, 1993, in that he knew the radiographers had not been trained in NDTs procedures or equipment; (2) on December 16, 1993, Mr. Osorio provided an NRC

inspector with written certification of the qualifications of the two contract radiographers, dated September 3, 1993, which falsely indicated that the radiographers had been qualified based on records obtained from their principal employer and by the experience demonstrated by the contract radiographers to him; and (3) on December 16, 1993, Mr. Osorio provided false oral statements to an NRC inspector indicating that he had demonstrated the safe use of the NDTs radiography equipment to the radiographers on September 3, 1993, when, in fact, he had not conducted such a demonstration.

III

Based on the above, the staff concludes that Mr. Osorio engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 34.31(a) by deliberately failing to utilize trained and qualified individuals during the conduct of radiographic operations at the Sun Oil Company refinery on September 4, 1993. Mr. Osorio also violated 10 CFR 30.10(a)(2), and caused the Licensee to be in violation of 10 CFR 30.9, by deliberately providing materially inaccurate and incomplete information to the NRC. As the former RSO of NDTs, Mr. Osorio was responsible to assure that NDTs conducted activities in accordance with NRC requirements and the NDTs radiation safety program. The NRC must be able to rely on the Licensee, its officials and employees to comply with NRC requirements, including the requirements to train radiographers in accordance with NRC regulations and to provide complete and accurate information to the NRC. Mr. Osorio's deliberate misconduct in causing the Licensee to violate 10 CFR 34.31(a), and his deliberate submission to the NRC materially inaccurate and incomplete

information, are violations of 10 CFR 30.10 and have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Osorio were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Osorio be prohibited from any involvement in NRC-licensed activities for a period of five years, and, if he is currently involved with another licensee in NRC-licensed activities, he must, following the effective date of this Order, cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Osorio is required to notify the NRC of his first employment involving NRC-licensed activities within a period of five years following the five-year prohibition period.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, IT IS HEREBY ORDERED THAT:

- A. For a period of five years from the effective date of this Order, Jesus N. Osorio is prohibited from engaging in, or exercising control over individuals engaged in NRC-licensed activities. NRC-licensed activities

are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising, directing, or serving as Radiation Safety Officer for any licensed activities conducted within the jurisdiction of the NRC.

- B. At least five days prior to the first time that Jesus N. Osorio engages in, or exercises control over, NRC-licensed activities within a period of five years following the five-year prohibition in Section IV.A above, a, he shall notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement, under oath or affirmation, that Jesus N. Osorio understands NRC requirements, that is committed to compliance with NRC requirements, and that provides a basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Osorio of good cause.

In accordance with 10 CFR 2.202, Jesus N. Osorio must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Osorio or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, Suite 2900, 101 Marietta Street, Atlanta, GA 30323, and to Jesus N. Osorio, if the answer or hearing request is by a person other than Jesus N. Osorio. If a person other than Jesus N. Osorio requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Jesus N. Osorio, or another person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director
for Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 16~~th~~ day of July 1996



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 2, 1997

IA 96-103

Mr. Cecil Ray Owen
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

Dear Mr. Owen:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because of your deliberate misconduct in violation of 10 CFR 50.5 of the Commission's regulations. Specifically, in 1995, you deliberately failed to state your complete employment history on your application for employment with Westinghouse Electric Corporation at the North Anna Power Station in order to conceal that you had tested positive for use of controlled substances while working for a previous employer. Based on your actions, the Order prohibits your involvement in NRC-licensed activities for a period of one year and requires your notification of the NRC of your first involvement in NRC-licensed activities for one year following the prohibition period.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this Order may also subject the person to civil monetary penalty.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response, if you choose to submit one, will be placed in the NRC Public Document Room (PDR). To the extent possible, any response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Mr. Cecil Ray Owen

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Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at (301) 415-2741.

Sincerely,


James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Research, and Regional Operations

Enclosure: Order Prohibiting Involvement
in NRC Licensed Activities

cc w/enc1 [HOME ADDRESS DELETED]:
Virginia Electric and Power Company
ATTN: Mr. J. P. O'Hanlon
Senior Vice President - Nuclear
Innsbrook Technical Center
5000 Dominion Boulevard
Glen Allen, VA 23060

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
CECIL RAY OWEN

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)

IA 96-103

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Between January 25, 1995 and May 23, 1995, Mr. Cecil Ray Owen was employed by Westinghouse Electric Corporation (WEC) as a millwright at Virginia Electric and Power Company's (VEPCO) North Anna Power Station (NAPS). VEPCO holds License Nos. NPF-4 and NPF-7 for North Anna Units 1 and 2, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on April 1, 1978 and August 21, 1980, respectively. The licenses authorize VEPCO to operate NAPS in accordance with the conditions specified therein. WEC is a contractor to VEPCO and provides various services at NAPS.

II

10 CFR 73.56 requires, in part, that nuclear power plant licensees implement access authorization programs or accept a contractor's access authorization program for individuals seeking unescorted access to protected and vital areas of nuclear power plants. The objective of the regulation is to provide high assurance that individuals granted unescorted access are trustworthy and reliable and do not constitute an unreasonable risk to the health and safety of the public. The unescorted access authorization program must include a background investigation, including an individual's employment history. The decision to grant unescorted access authorization must be based upon the licensee's review and evaluation of all pertinent information developed.

III

In order to be certified for unescorted access at NAPS, Mr. Owen was required to complete a WEC preemployment security questionnaire which included a requirement that he list all prior employment for the last five years. Mr. Owen completed the questionnaire in January 1995. The questionnaire was used by WEC to conduct a background investigation. Mr. Owen was granted unescorted access authorization to NAPS on the basis of information he submitted on this WEC preemployment security questionnaire. Information regarding prior drug usage is material to the NRC in that licensee fitness-for-duty programs must provide reasonable assurance that plant personnel will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, which in any way adversely affects their ability to safely and competently perform their duties. Fitness-for-duty programs must also provide reasonable measures for early detection of persons not fit to perform activities. Withholding information regarding prior drug usage circumvents these provisions of the fitness-for-duty programs. Deliberate misconduct demonstrates untrustworthiness to conduct activities at an NRC-licensed facility.

The Nuclear Regulatory Commission Office of Investigations (OI) conducted an investigation, completed on June 26, 1996, which found that Mr. Owen completed the WEC background questionnaire for a position at NAPS and deliberately failed to identify previous employment, within the five year period, where his employment was terminated for a positive drug test.

The deliberate misconduct rule in 10 CFR 50.5(a)(2) provides, in part, that an employee of a licensee, or employee of a contractor or subcontractor of a licensee, may not deliberately submit to the licensee, or the licensee's contractor or subcontractor, information that the employee knows to be incomplete or inaccurate in some respect material to the NRC. Mr. Owen violated this provision in that he was employed by WEC, a contractor to VEPCO, an NRC licensee, and deliberately provided information to WEC that was not complete, in that he did not identify one previous employer on an access authorization questionnaire he filled out at WEC's request. This information was material to the NRC as WEC and VEPCO relied on it in order to satisfy the requirement of 10 CFR Part 26 (Fitness for Duty Programs) and 10 CFR 73.56 (Personnel access authorization requirements for nuclear power plants).

Other pertinent information call into question Mr. Owen's credibility and trustworthiness. Mr. Owen, when questioned by OI, did not admit that he had falsified the questionnaire. Mr. Owen asserted that the questionnaire he completed had a statement on the bottom that only those periods of employment in excess of 30 days be included. When confronted with a photocopy of the questionnaire he signed, which contained instructions to list all employment for the previous five years, Mr. Owen remained steadfast in his assertion that the form he signed only required periods of employment in excess of 30 days. During the OI interview, Mr. Owen repeatedly denied using illegal drugs. However, when confronted with the laboratory results from his previous employer, Mr. Owen admitted that he used marijuana on isolated occasions.

Mr. Owen also told OI that he had not begun working at NAPS when he was advised of his denial of unescorted access when, in fact, he was employed at NAPS during the period between January 25 and May 23, 1995.

On August 19, 1996, the NRC sent a certified letter to Mr. Owen advising him of the apparent violation of NRC requirements and offering him the opportunity to attend a predecisional enforcement conference. The letter required a written response within 30 days of receipt and advised Mr. Owen that if he decided not to participate in a conference, the NRC would proceed based on the OI findings. After Mr. Owen received the letter, he telephoned Mr. A. Gibson, Director, Division of Reactor Safety, in the Region II office. Mr. Owen commented that a ban would affect his livelihood in that a large portion of his work was at nuclear sites. Mr. Gibson said that Mr. Owen should address this potential impact in his written response. As of the date of this Order, the NRC had not received a written response from Mr. Owen.

IV

Based on the results of the OI investigation and the lack of any additional information from Mr. Owen, the staff concludes that Mr. Owen's omission was deliberate and in violation of 10 CFR 50.5(a)(2).

The NRC must be able to rely on licensees, contractors and their employees to provide information that is complete and accurate in all material respects. This is essential with respect to access authorization programs at nuclear power plants because: (1) temporary access determinations are made on the

basis of information provided by individuals prior to completion of a full background check; and, (2) the purpose of an access authorization program is to assure the trustworthiness and reliability of individuals granted unescorted access. Mr. Owen's deliberate omission raises serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees and their contractors. His omission also raises doubts about his trustworthiness and reliability.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with Commission requirements and that the health and safety of the public will be protected if Mr. Owen were permitted at this time to be involved in NRC-licensed activities. Therefore, public health and safety and the public interest require that Mr. Owen be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order and, if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. Additionally, Mr. Owen is required to notify the NRC of his first employment in NRC-licensed activities for one year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Owen's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5 and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. Mr. Cecil Ray Owen is prohibited for one year from the date of this Order from engaging in or exercising control over individuals engaged in NRC-licensed activities, including obtaining unescorted access at an NRC-licensed facility. If Mr. Owen is currently involved in NRC licensed activities, he must immediately cease such activities, inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
- B. For one year following the period of prohibition set forth in Paragraph V.A. above, Mr. Cecil Ray Owen shall, within 20 days of his acceptance of his first employment offer involving NRC-licensed activities as defined in Paragraph V.A above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities.

The notice shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon demonstration by Mr. Owen of good cause.

VI

In accordance with 10 CFR 2.202, Mr. Owen must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Owen or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323 and to Mr. Owen if the answer or hearing request is by a person other than Mr. Owen. If a person other than Mr. Owen requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Owen or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

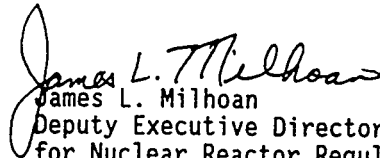
Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Owen may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been

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approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James L. Milhoan
Deputy Executive Director
for Nuclear Reactor Regulation,
Research, and Regional Operations

Dated at Rockville, Maryland
this 2nd day of January 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

MAR 10 1994

IA 94-001

Mr. Hartsell S. Phillips

(Address deleted)

Dear Sir:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED
ACTIVITIES (EFFECTIVE IMMEDIATELY)

The enclosed Order is being issued because of your violations of 10 CFR Part 30 of the Commission's regulations as described in the Order.

Failure to comply with the provisions of this Order may result in civil or criminal sanctions.

Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the enclosure will be placed in the NRC's Public Document Room.

Sincerely,


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Enclosure: As stated

cc: Logan General Hospital
State of West Virginia

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Hartsell S. Phillips

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IA 94-001

ORDER PROHIBITING INVOLVEMENT
IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Hartsell S. Phillips is employed by Logan General Hospital, Logan, West Virginia. Logan General Hospital (Licensee) holds License No. 47-19919-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. The license authorizes possession and use of byproduct material in accordance with the conditions specified therein. Mr. Phillips has been employed by the Licensee since approximately June 1991 as the Chief Technologist, Radiation Safety Officer (RSO), and Chairman of Radiation Safety Committee with responsibilities involving compliance with NRC requirements for radiation protection. Mr. Phillips was removed as Chairman of the Radiation Safety Committee on January 1, 1994, and removed as RSO on February 18, 1994. On February 22, 1994, the Licensee informed the NRC that it had suspended, subject to termination, Mr. Phillips on February 18, 1994, based on information the Licensee had received through interviews with its staff and other information developed by the Licensee.

On December 7-8, 1993, an NRC inspection was conducted at the Licensee's facility in Logan, West Virginia. As a result of information developed during that inspection, an investigation by the Office of Investigations (OI) was initiated in January 1994. Although this investigation is continuing, OI interviews of Licensee personnel and review of documents provided by OI reveal that nuclear medicine technologists under Mr. Phillips' supervision and at his direction, and Mr. Phillips himself, deliberately increased radiopharmaceutical dosages administered to patients above the dosages prescribed by the authorized user and set forth in the Licensee's procedures manual, and falsified the dosage records of those patients by making them appear as if the prescribed dosages had been administered. The OI interviews indicate that this practice of increasing dosages and of falsifying records continued for an extended period of time. The exact number of patients affected is not clear, but involved numerous administrations.

In addition, Mr. Phillips falsified records and directed nuclear medicine technologists under his supervision to falsify records relating to: training of nuclear medicine technologists, required by 10 CFR 19.12; daily dose calibrator constancy checks, required by 10 CFR 35.50(b)(1); daily and weekly surveys in nuclear medicine areas, required by 10 CFR 35.70(a), (b), and (e); and

surveys related to the receipt and shipment of licensed material, required by 10 CFR 20.205(d) and License Condition 16.

Specifically, these records indicated that the training, checks and surveys had been performed when in fact they had not been performed. The records falsification occurred for an extended period of time and may have been as long as 15 months during 1992 and 1993, and involved the falsification of records for surveys and training in nuclear medicine required during this period of time. The investigation also revealed that Mr. Phillips specifically instructed one nuclear medicine technologist to deny having falsified records and advised others to be untruthful when questioned by NRC inspectors.

III

Although the NRC investigation is continuing, based on the above, Mr. Phillips engaged in deliberate misconduct, a violation of 10 CFR 30.10, which caused the Licensee to be in violation of a number of NRC requirements including: (1) administration of radiopharmaceutical doses that differed from the prescribed doses, required by 10 CFR 35.25 and License Condition 16; (2) failure to provide training to nuclear medicine technologists, required by 10 CFR 19.12; (3) failure to perform the daily constancy checks of the dose calibrator, required by 10 CFR 35.50(b)(1); (4) failure to perform the required daily and weekly contamination and radiation surveys, required by

10 CFR 35.70(a), (b), and (e); (5) failure to perform the required surveys for radioactive material receipt, required by 10 CFR 20.205(d) and License Condition 16; and (6) failure to maintain accurate and complete records involving NRC-licensed activities (i.e., records of dose calibrator constancy checks (10 CFR 35.50(e)), radiation and contamination surveys (10 CFR 35.70(a), (b), and (h), and 10 CFR 20.401(b) and (c)), required by 10 CFR 30.9. Mr. Phillips also deliberately provided NRC inspectors information he knew to be inaccurate which was material to the NRC, also in violation of 10 CFR 30.10, which caused the Licensee to be in violation of 10 CFR 30.9.

As the RSO for the Licensee, Mr. Phillips was responsible, pursuant to 10 CFR 35.21(a), for ensuring that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements, including the administration of radiopharmaceuticals, performance of required surveys, and keeping of required records which evidence compliance with Commission requirements. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Phillips engaged in deliberate misconduct, a violation of 10 CFR 30.10(a)(1), causing the Licensee to be in violation of NRC requirements, as noted above,

and submitted to the NRC information he knew to be incomplete or inaccurate, a violation of 10 CFR 30.10(a)(2).

Mr. Phillips' deliberate misconduct has raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. In addition, Mr. Phillips' deliberate misconduct caused this Licensee to violate numerous Commission requirements and his deliberate false statements to Commission officials demonstrate conduct that cannot, and will not, be tolerated.

Consequently, in light of the numerous violations caused by Mr. Phillips' conduct, the length of time the noncompliances existed, and the deliberate nature of Mr. Phillips' actions, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Phillips were permitted at this time to be involved in any NRC-licensed activities. Therefore, the public health, safety and interest require, pending further action by the NRC, that Mr. Phillips be prohibited from involvement in licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to Sections 81, 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

Pending further action by the NRC, Hartsell S. Phillips is prohibited from participation in any respect in NRC-licensed activities. For the purposes of this paragraph, NRC-licensed activities include licensed activities of: 1) an NRC licensee, 2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 CFR 150.20, and 3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Phillips of good cause.

V

In accordance with 10 CFR 2.202, Hartsell S. Phillips must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent

to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Hartsell S. Phillips or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, Suite 2900, 101 Marietta Street, NW, Atlanta, Georgia 30323, and to Hartsell S. Phillips, if the answer or hearing request is by a person other than Hartsell S. Phillips. If a person other than Hartsell S. Phillips requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Hartsell S. Phillips or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Hartsell S. Phillips, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the same time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Sr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Dated at Rockville, Maryland
this 10th day of March 1994

September 19, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Peter B. Bloch, Chairman

Dr. Jerry R. Kline

Frederick J. Shon

In the matter of

HARTSELL D. PHILLIPS, JR.
West Virginia

Docket No. IA-94-001

Re: Allegation of Deliberate
Violations

ASLBP No. 94-694-05-EA

MEMORANDUM AND ORDER
(Dismissal Pursuant to Agreement)

On September 14, 1995, the parties to the above-captioned proceedings, Hartsell Phillips (Phillips) and the Staff of the United States Nuclear Regulatory Commission (Staff), informed the Atomic Safety and Licensing Board ("Licensing Board") of the following developments concerning this matter:

First, on June 5, 1995, Mr. Phillips pled guilty to a one-count Superseding Information stating a violation of law, related to the matters which are the subject of this proceeding. A copy of the United States District Court's Order of June 6, 1995, adjudging Mr. Phillips to be guilty and convicting him of the count charged in the Information, is attached. Sentencing of Mr. Phillips was conducted by the

9504605

Court on August 22, 1995, in accordance with the Court's Order of June 6, 1995.

Second, the parties have reached an agreement in settlement of this proceeding. Accordingly, we approve of the stipulation in the agreement and provide the requested relief.

ORDER

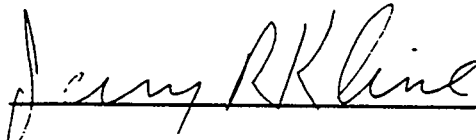
For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 19th day of September, 1995, ORDERED, that:

1. Hartsell D. Phillips, Jr. is permitted to withdraw his request for hearing on the Staff's "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)," dated March 10, 1994, and he is dismissed as a party in the proceeding pertaining to that Order;

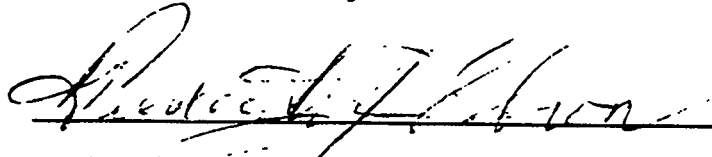
2. The attached Stipulation is adopted as an order of this Board; and

3. The proceeding is dismissed with prejudice.

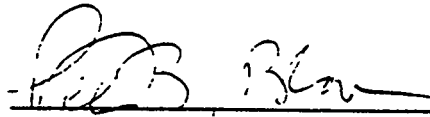
THE ATOMIC SAFETY AND LICENSING BOARD



Jerry R. Kline
Administrative Judge



Frederick J. Shon
Administrative Judge



Peter B. Bloch
Chairman

Rockville, Maryland

STIPULATION FOR SETTLEMENT OF PROCEEDING

THIS AGREEMENT is made by and between Hartsell Phillips ("Phillips") and the Staff of the United States Nuclear Regulatory Commission ("NRC Staff" or "Staff"), to wit:

WHEREAS Logan General Hospital, Logan, West Virginia ("Logan" or the "Licensee"), holds License No. 47-19919-01 issued by the NRC pursuant to 10 C.F.R. Parts 30 and 35, which license authorizes possession and use of byproduct material in accordance with the conditions specified therein; and

WHEREAS Phillips was employed by Logan, commencing in January 1991, as Chief Technologist, Radiation Safety Officer ("RSO") and Chairman of the Radiation Safety Committee ("RSC"), with responsibilities, *inter alia*, involving compliance with NRC requirements for radiation protection, until a date on which his employment was suspended by Logan in or about February 1994; and

WHEREAS on March 10, 1994, the NRC Staff issued an "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)," 54 Fed. Reg. 13346 (March 21, 1994), based, *inter alia*, upon a finding that Phillips had engaged in deliberate misconduct in violation of 10 C.F.R. § 30.10, which caused the Licensee to be in violation of a number of NRC regulatory requirements; and

WHEREAS the Order prohibited Phillips, pending further action by the NRC, from participation in any respect in NRC-licensed activities, to include licensed activities of (1) an NRC licensee, (2) an Agreement State licensee conducting licensed activities in NRC jurisdiction pursuant to 10 C.F.R. § 150.20, and (3) an Agreement State licensee involved in distribution of products that are subject to NRC jurisdiction; and

WHEREAS on March 30, 1994, Phillips filed a "Request for Hearing and Answer of Hartsell D. Phillips" concerning the Order, pursuant to 10 C.F.R. § 2.202, in response to which adjudicatory proceedings have been convened and remain pending before an Atomic Safety and Licensing Board ("Licensing Board") at this time; and

WHEREAS the undersigned parties recognize that certain advantages and benefits may be obtained by each of them through settlement and compromise of the matters now pending in litigation between them, including, without limitation, the elimination of further litigation expenses, uncertainty and delay, and other tangible and intangible benefits, which the parties recognize and believe to be in the public interest; and

WHEREAS, pursuant to 10 C.F.R. § 2.203, the Staff and Phillips have stipulated and agreed to the following

provisions for settlement of the above-captioned proceeding, subject to the approval of the Licensing Board, before the taking of any testimony or trial or adjudication of any issue of fact or law; and

WHEREAS Phillips is willing to waive his hearing and appeal rights regarding this matter, in consideration of the terms and provisions of this Stipulation and settlement agreement; and

WHEREAS the terms and provisions of this Stipulation, once approved by the Licensing Board, shall be incorporated by reference into an order, as that term is used in subsections (b) and (c) of section 161 of the Atomic Energy Act of 1954, as amended (the "Act"), 42 U.S.C. § 2201, and shall be subject to enforcement pursuant to the Commission's regulations and Chapter 18 of the Act, 42 U.S.C. § 2271 et seq.;

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Phillips agrees to refrain from engaging in, and is hereby prohibited from engaging in, any NRC-licensed activities up to and including March 9, 1999, five years from the date of the NRC "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)," dated March 10, 1994. In addition to the definition of "NRC-licensed activities" set forth above, said definition is understood to include any and all activities that are conducted pursuant to

a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 C.F.R. § 150.20.

2. For a period of five years after the above-specified five-year period of prohibition has expired, i.e., from March 10, 1999 through March 9, 2004, Phillips shall, within 20 days of his acceptance of each and any employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined above; provide written notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities, and a detailed description of his duties and the activities in which he is to be involved.

3. In the first notification provided pursuant to Paragraph 2 above, Phillips shall include a statement of his commitment to compliance with regulatory requirements and an explanation of the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

4. The parties agree that, as an integral part of this Stipulation and upon execution hereof, and subject to the

approval of this Stipulation by the Licensing Board, (a) Phillips will withdraw his March 30, 1994 request for hearing on the NRC Staff's Order of March 10, 1994, and (b) the parties will file a joint request for dismissal of the proceedings on that Order, with prejudice, it being understood and agreed that the Staff will take no further enforcement or other action against Phillips in connection with that Order.¹

5. It is understood and agreed that nothing contained in this Agreement shall be binding on, or preclude lawful action by, any other Government agency or department, including, without limitation, the United States Department of Justice and/or the United States Attorney.

¹ The parties recognize and agree that nothing in this Agreement shall be deemed to prohibit the NRC Staff from taking enforcement or other action (a) against Phillips for violation of this Agreement, or (b) against persons other than Phillips in connection with or related to any of the matters addressed in the Order of March 10, 1994, should the Staff determine, in its sole discretion, that it is appropriate to do so.

IN WITNESS WHEREOF, we set our hand and seal this 14th
day of September, 1995.

FOR HARTSELL PHILLIPS:

FOR THE NRC STAFF:

[signed]

Charles L. Woody
Counsel for Hartsell Phillips

[signed]

Sherwin E. Turk
Counsel for NRC Staff

[signed]

Hartsell D. Phillips, Jr.

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

**In the Matter of
HARTSELL S. PHILLIPS**

Docket No.(s) IA-94-001

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB MEMO & ORDER (LBP-95-16) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

**Administrative Judge
Peter B. Bloch, Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Administrative Judge
Frederick J. Shon
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Sherwin E. Turk, Esq.
Office of the General Counsel
Mail Stop 0-15 B 18
U.S. Nuclear Regulatory Commission
Washington, DC 20555**

**Charles L. Woody, Esq.
Spilman, Thomas & Battle
500 Virginia St., East, #1200 Union Ctr
Charleston, WV 25321**

**Dated at Rockville, Md. this
19 day of September 1995**


Office of the Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

APR 05 1994

IA 94-004

Mr. Douglas D. Preston
(Address deleted
Under 10 CFR 2.790)

Dear Mr. Preston:

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY) (NRC INSPECTION REPORT NO. 50-
331/93020)

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities is being issued as a consequence of your deliberately providing false information on applications you made for access authorization at the Iowa Electric Light and Power Company's (licensee) Duane Arnold Energy Center. On or about June 19, 1990, and on June 23, 1993, you indicated on your access authorization applications that you had not been arrested or convicted of a criminal offense other than minor traffic violations. The licensee subsequently learned that you had been arrested and convicted several times for crimes other than traffic violations and that you were incarcerated for some of those offenses. As a result of your deliberate false statements, you were granted unescorted access to the Duane Arnold facility in 1990 and again in 1993. A licensee investigator interviewed you about the false information at which time you indicated that you had lied on your applications in 1990 and 1993 and that you would lie again about your criminal record. The deliberate false information on your criminal history in your June 23, 1993 application caused you to be personally in violation of 10 CFR 50.5, "Deliberate Misconduct".

While you deliberately made the same false statements on your access authorization application of June 19, 1990, that instance is not being cited in the enclosed Order because it occurred prior to September 16, 1991, the date that 10 CFR 50.5 became effective.

Failure to comply with the provisions of the enclosed Order may result in civil or criminal sanctions.

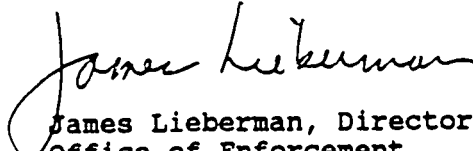
Questions concerning the Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 504-2741.

Mr. Douglas D. Preston

2

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosure with your home address removed will be placed in the NRC's Public Document Room.

Sincerely,


James Lieberman, Director
Office of Enforcement

Enclosure:
Order Prohibiting Involvement in
NRC-Licensed Activities (Effective Immediately)

cc w/enclosure:

L. Liu, Chairman of the Board and
Chief Executive Officer
D. Wilson, Plant Superintendent
Nuclear Licensing
K. Young, Manager, Nuclear Licensing
Resident Inspector, RIII
Stephen Brown, Iowa Department
of Commerce
Licensing Project Manager, NRR
Berry Construction Company

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
MR. DOUGLAS D. PRESTON)

IA 94-004

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Douglas D. Preston was employed by the Berry Construction Company at the Iowa Electric Light and Power Company's (IELPC or Licensee) Duane Arnold Energy Center where he was granted unescorted access. IELPC holds Facility License DPR-49, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on February 22, 1974. The license authorizes IELPC to operate the Duane Arnold Energy Center located near Cedar Rapids, Iowa, in accordance with the conditions specified therein.

II

Mr. Preston first applied for employment with Berry Construction Company and was subsequently granted unescorted access to the Duane Arnold Energy Center on or about June 19, 1990, based in part on the representations he made on his access authorization applications. One of the representations was that he had not been arrested and convicted for any criminal offense other than minor traffic violations. The Licensee submitted fingerprint cards to the Federal Bureau of Investigations (FBI) and subsequently was

informed that Mr. Preston had a record of arrests, convictions, and imprisonments prior to 1978. However, while waiting for the results of the FBI fingerprint check, Mr. Preston's employment at the Duane Arnold Energy Center was terminated for a lack of work. Mr. Preston's deliberate false statements on his access authorization application on or about June 19, 1990 were essentially the same as his 1993 false statements (addressed below), but are not being cited in this Order as a violation because they were made before the effective date of 10 CFR 50.5.

On June 21, 1993, Mr. Preston again applied for a position at the Duane Arnold Energy Center and was hired on June 21, 1993 by the Berry Construction Company as a laborer with responsibilities involving NRC-licensed activities. On June 23, 1993, Mr. Preston filled out an access authorization application and again denied having a criminal history. The Licensee granted Mr. Preston temporary unescorted access to the plant on or about July 15, 1993. On or about August 13, 1993, the Licensee received the results of a second FBI fingerprint check which again detailed Mr. Preston's criminal history. Mr. Preston, when questioned by an IELPC investigator on August 13, at first denied having a criminal history and then admitted that he had lied about his criminal history to gain employment in 1990 and again in 1993. He further stated that he would lie again to gain employment in the future. The Licensee then revoked Mr. Preston's unescorted access based on the deliberately false information regarding his criminal history

on his access authorization application.

Based on the above, Mr. Preston engaged in deliberate misconduct on or about June 23, 1993, by deliberately falsely stating on the access authorization application that he had no criminal history for crimes other than minor traffic offenses. The Commission's regulations in 10 CFR 50.5, in part, prohibit any employee of a contractor of a licensee from deliberately submitting to the licensee information that the employee knows to be incomplete or inaccurate in some respect material to the NRC. Mr. Preston's actions constitute a violation of 10 CFR 50.5(a). Information concerning criminal history is material to the determination the licensee must make to meet 10 CFR 73.56(b)(2).

III

The NRC must be able to rely on the Licensee, its contractors, and the licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Preston's actions in deliberately providing false information to the Licensee constitute deliberate violations of Commission regulations and his statement to the Licensee that he would do it again have raised serious doubt as to whether he can be relied upon to comply with

NRC requirements and to provide complete and accurate information to the NRC in the future.

Consequently, I lack the requisite reasonable assurance that nuclear safety activities within NRC jurisdiction can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Preston were permitted to be engaged in the performance of licensed activities. Therefore, the public health, safety and interest require that Mr. Preston be prohibited from being involved in the performance of activities licensed by the NRC for a five year period. In addition, Mr. Preston is required to notify the NRC, for an additional five year period, of his acceptance of employment in NRC-licensed activities so that appropriate inspections can be performed. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the deliberate misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 50.5, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT :

- A. Mr. Douglas D. Preston is prohibited from engaging in activities licensed by the NRC for five years from the date of this Order. For the purposes of this Order, licensed activities include the activities licensed or regulated by: (1) NRC; (2) an Agreement State, limited to the Licensee's conduct of activities within NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State where the licensee is involved in the distribution of products that are subject to NRC jurisdiction.
- B. After the five year prohibition has expired as described in paragraph A above, Mr. Preston shall provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, for acceptance of any employment in licensed activity for an additional five year period.

The Regional Administrator, Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Preston of good cause.

V

In accordance with 10 CFR 2.202, Mr. Preston must, and any other person adversely affected by this Order may, submit an answer to

this Order, and may request a hearing within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Preston or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region III, U. S. Nuclear Regulatory Commission, 801 Warrenville Road, Lisle, Illinois 60532-4351, and to Mr. Preston, if the answer or hearing request is by a person other than Mr. Preston. If a person other than Mr. Preston requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

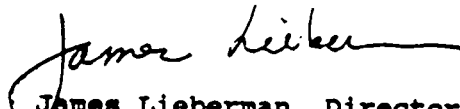
If a hearing is requested by Mr. Preston or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether

this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Preston, or any person adversely affected by this Order, may in addition to demanding a hearing, at the time that answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 5th day of April 1994



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 1, 1997

EA 97-019
EA 97-150
IA 97-024

Roy Sadovsky, D.V.M.
Post Office Box 20243
Floral Park, New York 11002

SUBJECT: NOTICE OF DENIAL OF LICENSE RENEWAL AND ORDER TERMINATING LICENSE;
ORDER PROHIBITING INVOLVEMENT IN LICENSED ACTIVITIES; AND NOTICE
OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY - \$4,000
(NRC Inspection No. 030-31085/96-001)

Dear Dr. Sadovsky:

The enclosed Notice of Denial of License Renewal and Order Terminating License, Order Prohibiting Involvement in Licensed Activities (Effective Immediately), and Notice of Violation and Proposed Imposition of Civil Penalty are being issued because of your violation of NRC requirements, including the deliberate violation of certain NRC requirements.

Your license, originally issued on December 22, 1989, was due to expire on January 31, 1995. The license has remained in effect, however, pursuant to 10 CFR 30.36(a), based on a timely request made by you in an application for renewal filed on January 24, 1995. On September 13, 1996, the NRC issued an Order Suspending License (Effective Immediately) and Demand for Information (DFI), due to your apparent willful use of licensed material at a location not authorized by your license, as well as your failure to comply with numerous additional NRC requirements. The violations were identified during an NRC inspection conducted in August and September 1996, the report of which was forwarded to you on December 10, 1996. In addition, an investigation was conducted by the NRC Office of Investigations (OI) subsequent to the inspection. As noted in the synopsis of the OI report forwarded to you with our February 14, 1997 letter, OI determined that you deliberately violated a condition of your license by implanting gold-198 seeds in horses at a location not authorized by your license. As a result, an enforcement conference was conducted with you on February 26, 1997, to discuss the violations, their causes, and your corrective actions.

The September 13, 1996 Suspension Order required that you: (1) place all NRC-licensed material in your possession in locked storage; (2) suspend all activities under your license to use, receive, or transfer licensed material; and (3) maintain all records related to licensed activities in their original form and not alter or remove any of the records in any way. The DFI required that you submit information, in writing and under oath or affirmation, as to: (1) why your license should not be revoked, or in the alternative not renewed; (2) all locations where licensed material has been used since February 1992, and the dates thereof; and (3) the identity of all persons who have assisted

with treatments or cared for treated horses and an estimate of the radiation exposure received by each such person.

In your October 15, 1996 response to that Order, you indicated that you had no NRC-licensed material in your possession; you had suspended all activities under your license; you had not received, used or transferred any licensed material since your license was suspended; and you would maintain all required records. Also, in response to the DFI, you indicated that you could not offer any adequate response why your license should not be revoked, and stated that, in fact, you had submitted a letter requesting that your license be terminated. You also indicated, as you subsequently did during the February 26, 1997 enforcement conference, that you did not willfully use the material at a location not authorized by your license, and you believed your license had been amended to include authorization for work at the location in question, namely, the White Birch Farm in Allentown, New Jersey. You also stated that if there was any attempt to willfully use the material at a location not listed on your license, you would not have kept such accurate records. Subsequently, in your January 7, 1997 response to the December 10, 1996 inspection report, you stated that, upon reconsideration, you did not wish to voluntarily terminate your license and requested that the NRC reinstate the operational status of your license upon the completion of its inquiry. You also reiterated your belief that you had submitted a license amendment to allow use of licensed material at White Birch Farm. Finally, you noted that you had retained the services of a consultant to provide operational review of your radiation safety practices after your license was reinstated.

Notwithstanding your contentions during the enforcement conference and in your two letters, we have concluded that your actions in violating NRC requirements by continuing to perform work at White Birch Farm, an unauthorized location, were deliberate. Particularly disturbing is the fact that you used the licensed material at the unauthorized location in February and March 1992 only a short time after you were cited in a Notice of Violation (NOV) issued in January 1992 for the same violation, and you informed the NRC, in your February 1992 response to the NOV, that you would confine use of the material to the authorized locations. Although you asserted that you believed you had submitted a license amendment to allow use of licensed material at White Birch Farm, this request was not submitted until January 1995.

Therefore, given this deliberate violation, as well as the potential safety consequence of the other violations, including inadequate security of licensed material and inadequate control of exposure to the gold-198 seeds, the NRC has determined that your license should not be renewed, that your license should be terminated, and that you should be precluded from involvement in licensed activities for a period of one year. The NRC considered prohibiting you from involvement in NRC-licensed activities for a longer period, but has decided not to do so because: (1) you accepted responsibility for the violations at the conference; (2) you have already been prohibited from performing licensed activities since issuance of the September 13, 1996 Suspension Order; and (3) you retained a consultant who has described plans to upgrade and monitor

your program, should the NRC allow you to be engaged in licensed activities in the future.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of these Orders shall be subject to criminal prosecution as set forth in that section. Violation of these Orders may also subject the person to civil monetary penalty.

In addition to these Orders, the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) are being issued in view of the nature, number, and significance of the violations identified during the inspection. Given the deliberate violation, as well as the significant lack of attention to ensuring your activities were conducted safely and in accordance with NRC requirements, the violations have been classified in the aggregate as a Severity Level II problem in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement policy), NUREG-1600.

The violation involving the deliberate use of licensed material at an unauthorized location is of particular concern because the regulatory program is based on licensees acting with integrity and communicating with candor. The remaining violations are also of significant concern because such failures pose a potential safety consequence to the public including your workers. In the aggregate, the violations in the enclosed Notice are of very significant regulatory concern.

Therefore, to emphasize the significance that the NRC attaches to deliberate violations, as well as the importance of strict adherence to NRC requirements, I am issuing the enclosed Notice and proposed civil penalty in the base amount of \$4,000 for this Severity Level II problem. This penalty is based on exercise of enforcement discretion pursuant to Sections VII.A.1.(a) and (c) of the Enforcement Policy.

You are required to respond to this letter and the enclosed Notice and should follow the instructions specified in the Notice when preparing your response. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In the inspection report sent to you with our letter dated December 10, 1996, we discussed potential exposures to you in excess of regulatory limits. We have reviewed your letter dated January 7, 1997, in which you concluded that no exposures in excess of regulatory limits occurred. Based on the information available to the NRC, there is uncertainty as to whether exposures in excess of regulatory limits occurred and, therefore, no enforcement action is being taken on that specific issue. However, there is sufficient evidence that the gold-198 seed treatment procedure has the potential to result in doses to persons in excess of regulatory limits if proper radiation safety practices are not rigorously implemented. We expect meticulous attention to the radiation safety measures described in any future application to the NRC for use of licensed material.

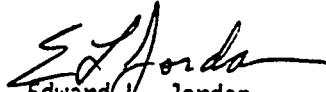
Roy Sadovsky, D.V.M.

- 4 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosures, and your response will be placed in the NRC Public Document Room.

Questions concerning these actions should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who may be reached at (301) 415-2741.

Sincerely,



Edward L. Jordan
Deputy Executive Director for Regulatory
Effectiveness, Program Oversight,
Investigations and Enforcement

Docket No. 030-31085
License No. 31-28369-01

Enclosures:

1. Notice of Denial of License Renewal and Order Terminating License
2. Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)
3. Notice of Violation and Proposed Imposition of Civil Penalty

cc w/encls:
State of New York
State of New Jersey

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Roy Sadovsky, D.V.M.
Floral Park, New York

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IA 97-024

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Roy Sadovsky, D.V.M., (Licensee or Dr. Sadovsky) is the holder of Byproduct Nuclear Material License No. 31-28369-01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of licensed material (i.e., gold-198 seeds) for implantation in horses for the treatment of leg injuries and diseases in accordance with the conditions specified therein. Condition 10 of the License requires that licensed material be used only at the Meadowlands Race Track in East Rutherford, New Jersey, or Showplace Farm and Gaitway Farm in Millstone Township, New Jersey. The License, originally issued on December 22, 1989, was amended on January 10, 1992, and was due to expire on January 31, 1995. The license has remained in effect, however, pursuant to 10 CFR 30.36(a), based on a request made by the Licensee in an application for renewal filed on January 24, 1995.

II

As noted in a Notice of Denial of License Renewal and Order Terminating License issued to Dr. Sadovsky concurrently on this date, the NRC has found, based on an inspection and investigation, that Dr. Sadovsky has deliberately engaged in violations of NRC requirements, as detailed in the Notice of Denial

of License Renewal and Order Terminating License. Notwithstanding the denial of Dr. Sadovsky's license renewal, given Dr. Sadovsky's deliberate failure to adhere to regulatory requirements, as well as the significance of additional violations of other requirements as set forth in the Notice of Denial of License Renewal and Order Terminating License, the NRC no longer has the necessary assurance that Dr. Sadovsky's activities, if performed under any other NRC license, would be performed safely and in accordance with requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Dr. Sadovsky were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Dr. Sadovsky be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order, and if he is currently involved with another licensee in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer. Additionally, Dr. Sadovsky is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the willfulness and significance of Dr. Sadovsky's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

III

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, Part 35, and 10 CFR 150.20, IT IS HEREBY ORDERED, IMMEDIATELY EFFECTIVE, THAT:

1. For a period of one year from the date of this Order, Roy Sadovsky, D.V.M., is prohibited from engaging in NRC-licensed activities.
NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted in areas of NRC jurisdiction pursuant to the authority granted by 10 CFR 150.20.
2. For a period of one year from the date of this Order, Dr. Sadovsky shall provide a copy of this Order to any prospective employer who engages in NRC-licensed activities (as described in Section III.1 above) prior to his acceptance of employment involving non-NRC-licensed activities with such prospective employer. The purpose of this requirement is to ensure that the employer is aware of the prohibition on Dr. Sadovsky from engaging in NRC-licensed activities.
3. The first time Dr. Sadovsky is employed in NRC-licensed activities following the one year prohibition, he shall notify the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia,

Pennsylvania 19406, prior to engaging in NRC-licensed activities, including activities under an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where licensed activities will be performed.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, Dr. Sadovsky must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Dr. Sadovsky or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing

and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, to Dr. Sadovsky if the answer or hearing request is by a person other than Dr. Sadovsky. If a person other than Dr. Sadovsky requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Dr. Sadovsky, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Dr. Sadovsky may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been

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approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION



Edward V. Jordan
Deputy Executive Director for Regulatory
Effectiveness, Program Oversight,
Investigations and Enforcement

Dated at Rockville, Maryland
this 1st day of May 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

April 15, 1997

IA 97-008

Mr. Derek Stephens
[Address removed pursuant
to 10 CFR 2.790]

SUBJECT: CONFIRMATORY ORDER

Dear Mr. Stephens:

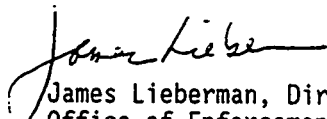
The enclosed Order is being issued because of your violation of 10 CFR 30.10, as described in the Order. The Order prohibits your involvement in NRC-licensed activities for a period of 3 years from the date of the Order. You agreed to the issuance of a Confirmatory Order in your signed statement dated March 11, 1997.

Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section. Violation of this order may also subject the person to civil monetary penalty.

Questions concerning this Order should be addressed to me at (301) 415-2741.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter with your address removed will be placed in the PDR.

Sincerely,


James Lieberman, Director
Office of Enforcement

Docket No. 030-30691
License No. 35-26953-01

Enclosure: As Stated

cc: (see next page)

Mr. Derek Stephens

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cc w/Enclosure:
State of Oklahoma

Mr. Loyd Barnett
Barnett Industrial X-Ray, Inc.
P.O. Box 1991
Stillwater, Oklahoma 74076

American Society of Nondestructive Testing, Inc.
ATTN: Technical Services Manager
1711 Arlingate Lane
P.O. Box 28518
Columbus, OH 43228-0518

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
Derek F. Stephens

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IA 97-008

CONFIRMATORY ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Mr. Derek F. Stephens was employed as a radiographer by Barnett Industrial X-Ray, Inc. (Licensee). The Licensee is the holder of License No. 35-26953-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34 and last renewed on March 21, 1996. The license authorizes possession and use of byproduct material in accordance with the conditions specified therein.

II

On October 3, 1996, Mr. Stephens and a radiographer's assistant were conducting radiography activities at a refinery in Ponca City, Oklahoma. Mr. Stephens was the more senior of the two and had received training regarding his responsibilities for conducting activities in accordance with Licensee procedures and NRC regulations.

NRC regulations require, in part, that at all times during the conduct of radiography activities, each individual wear a direct reading pocket dosimeter, an alarm ratemeter, and either a film badge or a thermoluminescent dosimeter (TLD) (10 CFR 34.33). NRC regulations also require that a survey be made after each exposure to determine that the sealed source has been returned

to its shielded position (10 CFR 34.43). NRC regulations further require that whenever a radiographer's assistant uses radiographic exposure devices or conducts radiation surveys required by 10 CFR 34.43(b), and the radiographer's assistant shall be under the personal supervision of a radiographer, including the radiographer providing immediate assistance if required and the radiographer watching the assistant's performance of the operations (10 CFR 34.44).

During radiography activities on October 3, 1996, Mr. Stephens and the radiographer's assistant were assigned to complete two radiographs. The exposure device was placed on a scaffold approximately 6 feet above the ground with the drive cable controls located on the ground. After the second exposure, Mr. Stephens instructed the radiographer's assistant to crank the source back in and remove the source guide tube. Mr. Stephens then left to remove the barricades and did not watch the radiographer's assistant. Without a survey meter, the radiographer's assistant approached and disconnected the source guide tube. After disconnecting the source guide tube, the radiographer's assistant observed that the source was not fully retracted into the exposure device and was still exposed. The radiographer's assistant immediately left the vicinity of the source and informed Mr. Stephens. As a result of this event, the radiographer's assistant received a higher-than-normal exposure, but the exposure did not exceed regulatory limits.

In violation of NRC requirements, Mr. Stephens did not wear a direct reading pocket dosimeter, an alarm ratemeter, and either a film badge or a TLD. Further, Mr. Stephens did not effectively supervise the radiographer's

assistant to ensure that the radiographer's assistant conducted a proper survey, as required by 10 CFR 34.43(b). Because he was not properly supervising the radiographer's assistant, Mr. Stephens did not notice that when the radiographer's assistant approached the source, the radiographer's assistant could not have performed the proper survey because he did not have a survey meter.

NRC's investigation and inspection of this incident began on October 4, 1996. In a sworn, signed statement provided by Mr. Stephens to NRC's Office of Investigations (OI), Mr. Stephens stated he had been working for the Licensee since August 1995, and that he had received written and oral training, on-the-job training, and formal classroom training. He stated he had been a Level II radiographer for about 3 months and that he had been taught his responsibilities as a supervisor, including ensuring that the radiographer's assistant and others comply with safety and regulations. Further, he stated that both he and the radiographer's assistant forgot their personal dosimetry and realized it only when they discovered the source was not retracted. The results of NRC's investigation and inspection are documented in NRC Inspection Report 030-30691/96-01 dated December 23, 1996. A predecisional enforcement conference was conducted with the Licensee on January 6, 1997, and on February 24, 1997, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$4000 to the Licensee for the violations described in this Section II of this Order.

Based on its review of all available information, the NRC has concluded that Mr. Stephens, a former employee of the Licensee, engaged in deliberate misconduct in violation of 10 CFR 30.10 by causing the Licensee to be in violation of 10 CFR 34.33(a). Specifically, notwithstanding Mr. Stephens' assertion that he forgot his personal dosimetry, the NRC has concluded that Mr. Stephens deliberately failed to wear the required personal monitoring devices. This conclusion is based on the fact that: (1) Mr. Stephens was trained on using personal monitoring devices; (2) Mr. Stephens was provided personal monitoring devices, which he had in the Licensee's truck used in traveling to the work site; (3) prior to conducting licensed activities, Mr. Stephens is required to perform daily preoperational tests, such as checking the operability of the alarming ratemeter and zeroing the pocket dosimeter assigned to him; and (4) in an October 8, 1996 signed, written statement to OI, Mr. Stephens stated that he "knew it was [his] responsibility to ensure Kevin [Assistant Radiographer] had his dosimetry but did not do so."

In addition, the NRC has concluded that Mr. Stephens' failure to supervise, through direct observation, the radiographer's assistant as he approached the exposure device without a survey instrument and attempted to disassemble the equipment, represents careless disregard for regulatory requirements. Given his training and experience, Mr. Stephens knew or should have known of the requirements of 10 CFR 34.44 that a radiographer's assistant must be under the personal supervision of a radiographer, including the radiographer providing immediate assistance if required and the radiographer watching the assistant's

performance of operations. This conclusion is also supported by Mr. Stephens' October 8, 1996 signed, written statement to OI that he had been taught that his responsibility as a supervisor included insuring the assistants and others complied with safety and regulations.

These willful acts are significant because Mr. Stephens, the senior radiographer, failed to observe the safeguards designed to protect him, the radiographer's assistant, and others from unnecessary and potentially dangerous radiation exposures. These willful acts contributed to an unnecessary radiation exposure to the radiographer's assistant. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements. Mr. Stephen's actions during this incident have raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

IV

By letter dated February 19, 1997, the NRC described its conclusions to Mr. Stephens. The letter documented the NRC's understanding that Mr. Stephens did not wish to participate in further discussions of the above issues, and that Mr. Stephens agreed to a commitment that he be prohibited from engaging in NRC-licensed activities for a period of 3 years. Mr. Stephens signed a statement dated March 11, 1997, consenting to the issuance of this Order with the commitment as described in Section V below. Mr. Stephens further agreed in his signed statement, that this Order is to be effective upon issuance and that he has waived his right to a hearing.

I find that Mr. Stephens' commitments as set forth in Section V are acceptable and necessary and conclude that with the commitment the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Stephens' commitments be confirmed by this Order. Based on the above and Mr. Stephens' consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

Mr. Stephens is prohibited from engaging in NRC-licensed activities, including work conducted as an employee of an Agreement State licensee if the work is performed in a non-Agreement State or an area of exclusive federal jurisdiction, for a period of 3 years from the date of this order.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Stephens of good cause.

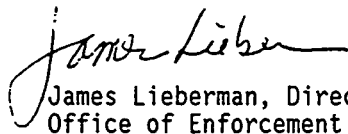
Any person adversely affected by this Confirmatory Order, other than Mr. Stephens, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011 and to Mr. Stephens. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in cursive script, appearing to read "James Lieberman".

James Lieberman, Director
Office of Enforcement

Dated at Rockville, Maryland
this 15th day of April 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 12, 1994

Mr. Rex Allen Werts
(Address deleted
under 10 CFR 2.790)

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
AND UNESCORTED ACCESS (EFFECTIVE IMMEDIATELY)
OI INVESTIGATION REPORT SYNOPSIS (2-93-052R)

Dear Mr. Werts:

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effectively Immediately) is being issued as a consequence of the deliberate false statements you made on an application for access authorization at the Carolina Power and Light Company's (Licensee) Brunswick Nuclear Plant. On or about March 11, 1993, you used an alias on your access authorization application and indicated on the application that you had not been arrested or convicted of any criminal offense. As a result of your deliberate false statements, you were granted unescorted access to the Brunswick Nuclear Plant on March 24, 1993. The Licensee subsequently learned of your use of an alias and that you had been arrested and convicted several times for crimes and were incarcerated for some of those offenses. A licensee supervisor interviewed you about your application, at which time you admitted that you had submitted false information on your application.

10 CFR 50.5(a)(2), "Deliberate misconduct," prohibits an employee of an NRC licensee or licensee contractor from deliberately submitting information to the licensee or licensee contractor that the employee knows to be incomplete or inaccurate in some respect material to the NRC. 10 CFR Part 2, Appendix C, "General Statement of Policy and Procedures for NRC Enforcement Actions," in particular Section VIII, "Enforcement Action Involving Individuals," provides guidance and considerations for enforcement sanctions against individuals who deliberately violate NRC requirements.

The NRC Office of Investigations (OI) conducted an investigation (2-93-052R) to determine whether you committed a willful violation in connection with your making false statements regarding your criminal background. The OI investigation concluded that you had deliberately provided false information concerning your criminal arrest and conviction record in order to gain unescorted access to the site protected area. By letter dated September 14, 1994, the NRC attempted to provide you with a copy of the OI investigation synopsis and afford you an opportunity for an enforcement conference prior to making a final decision regarding escalated enforcement action in your case. The letter has been returned by the post office as undeliverable and we have been unable to locate you. A copy of the September 14, 1994, letter with the OI synopsis attached is enclosed (Enclosure 1). If attempts to deliver this letter and the enclosed Order are not successful, it will not delay the effective date of the enclosed Order nor the placement of this letter and enclosed Order in the Public Document Room.

Mr. Rex Allen Werts

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The false information you provided regarding your criminal history on the March 11, 1993 access authorization application is a violation of 10 CFR 50.5, "Deliberate misconduct." Such conduct is unacceptable to the NRC. Therefore, after consultation with the Commission, I have been authorized to issue the enclosed Order Prohibiting Involvement in NRC-Licensed Activities and Unescorted Access (Effective Immediately). Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section.

You are required to provide a response to this Order and should do so within 20 days. Questions concerning the Order may be addressed to James Lieberman, Director, Office of Enforcement. Mr. Lieberman can be reached at telephone number (301) 504-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter with your home address removed, its enclosures and any response will be placed in the NRC's Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Sincerely,


James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Enclosures: 1. September 14, 1994 letter with OI synopsis
2. Order Prohibiting Involvement in NRC-Licensed
Activities and Unescorted Access (Effective Immediately)

cc w/encs: (See next page)

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

REX ALLEN WERTS
(Also Known As:
MICHAEL ALLEN HUNTER)

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IA 94-035

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES AND UNESCORTED ACCESS
(EFFECTIVE IMMEDIATELY)

I

Mr. Rex Allen Werts (Also Known As: Michael Allen Hunter) was employed by Power Plant Maintenance, Inc., (PPM) a contractor of the Carolina Power and Light Company (CP&L or Licensee), from March 24, 1993 until his unescorted access was revoked on July 26, 1993. Licensee is the holder of License Nos. DPR-62 and DPR-71 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50 on December 27, 1974 and November 12, 1976, respectively. The licenses authorize the operation of the Brunswick Nuclear Plant in accordance with the conditions specified therein. The facility is located on the Licensee's site in Southport, North Carolina.

II

On March 24, 1993, Mr. Werts was granted unescorted access to the Brunswick Nuclear Plant, based in part on representations he made on an access authorization application, dated March 11, 1993, which he submitted to Power Plant Maintenance, Inc., (PPM), a contractor of the Licensee. In the application, Mr. Werts falsely represented himself as Michael Allen Hunter and stated that he had not been arrested or convicted of any criminal offense. In addition, Mr. Werts failed to correct that information after he was granted unescorted access and continued to hold that status on the basis of his false

identity. The Licensee submitted fingerprint cards completed by Mr. Werts to the Federal Bureau of Investigation (FBI) and subsequently was informed that Mr. Werts (alias Mr. Hunter) had a record of arrests, convictions, and imprisonments prior to 1990.

III

Based on the above, Mr. Werts engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2) which prohibits any employee of a licensee or licensee contractor from deliberately submitting to the licensee or licensee's contractor information the employee knows to be incomplete or inaccurate in some respect material to the NRC. Information concerning an individual's true identity and criminal history is material in that it is used by the Licensee to make determinations relative to the grant or denial of access authorization. If the Licensee had been given accurate information regarding Mr. Werts' criminal record, the Licensee would not have granted unescorted access to Mr. Werts.

The NRC must be able to rely on the Licensee, its contractors, and licensee and contractor employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Werts' actions have raised serious concerns as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC or to NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that nuclear safety activities can be conducted in compliance with the Commission's requirements

and that the health and safety of the public would be protected if Mr. Werts were permitted at this time to be involved in the performance of licensed activities or were permitted unescorted access to protected or vital areas of NRC-licensed facilities. Therefore, the public health, safety and interest require that Mr. Werts be prohibited from being involved in the performance of activities licensed by the NRC and be prohibited from obtaining unescorted access for a period of three years from the date of this Order. For a period of five years from the date of this Order, Mr. Werts is required to inform the NRC of his acceptance of employment with any employer whose operations he knows or has reason to believe involve NRC-licensed activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the deliberate misconduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. For a three-year period from the date of this Order, Mr. Rex Allen Werts is prohibited from engaging in activities licensed by the NRC and is prohibited from obtaining unescorted access to protected and vital areas of facilities licensed by the NRC. For the purposes of this Order, licensed activities include the

activities licensed or regulated by: (1) NRC; (2) an Agreement State, limited to the Licensee's conduct of activities within NRC jurisdiction pursuant to 10 CFR 150.20; and (3) an Agreement State where the licensee is involved in the distribution of products that are subject to NRC jurisdiction.

- B. For a five-year period from the date of this Order, Mr. Werts is required to provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of his acceptance of employment with any employer whose operations he knows or has reason to believe involve NRC-licensed activities.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Werts of good cause.

V

In accordance with 10 CFR 2.202, Mr. Werts must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Werts or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the

Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, Region II, U.S. Nuclear Regulatory Commission, 101 Marietta St. N.W., Atlanta, Georgia 30323, and to Mr. Werts, if the answer or hearing request is by a person other than Mr. Werts. If a person other than Mr. Werts requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Werts or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

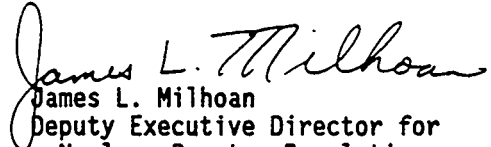
Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Werts, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without

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further order or proceedings. AN ANSWER OR A REQUEST FOR A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


James L. Milhoan
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations and Research

Dated at Rockville, Maryland
this *12th* day of December 1994

SYNOPSIS

On August 20, 1993, the U.S. Nuclear Regulatory Commission (NRC) licensee, Carolina Power and Light Company, submitted a Security Event Report to the NRC regarding an event at the licensee's Brunswick Nuclear Plant (BNP). The event described by the licensee involved an employee of a contractor who was granted unescorted access to the BNP vital and protected areas based on falsified employment and background information. This matter was referred to the NRC Office of Investigations (OI) Region II Field Office on September 1, 1993, for evaluation.

Based on OI review of the documentation and evidence obtained in this investigation, it is concluded that the subject deliberately falsified personal identification and background information to deceive the contractor, PPM, the licensee and the NRC in order to fraudulently obtain employment and unescorted access at the BNP.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 27, 1994

IA 94-024

Larry D. Wicks, President
Western Industrial X-Ray Inspection Company, Inc.
5354 Highway 89 North
Evanston, Wyoming 82931

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

The enclosed Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) is being issued because you engaged in deliberate misconduct as defined in 10 CFR 30.10. As described in the Order in more detail, the NRC has concluded that you deliberately failed to send an employee's thermoluminescent dosimeter (TLD) in for processing after you learned of an incident on July 31, 1993; that you deliberately failed to perform an evaluation of this employee's radiation exposure after becoming aware of the incident; that you were not truthful in responding to NRC inspectors and investigators about this incident; and that you deliberately failed to ensure that properly calibrated alarm ratemeters were provided and used by your radiography personnel. A copy of the synopsis of the OI report is enclosed.

The Order prohibits your involvement in NRC-licensed activities for a period of five years from the date of the Order, except as necessary to maintain licensed material in possession of WIX in safe storage or to transfer that material to an authorized recipient. Other than this exception, you are prohibited from any involvement in managing, supervising, or performing activities that are regulated by the NRC, including conducting or supervising radiography activities and acting as a Radiation Safety Officer for an NRC licensee.

Failure to comply with the provisions of this Order may result in further civil or criminal sanctions.

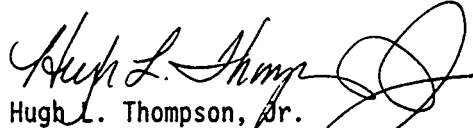
Questions concerning this Order should be addressed to Mr. James Lieberman, Director, Office of Enforcement, who can be reached at (301) 504-2741.

Larry D. Wicks

- 2 -

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice", a copy of this letter and the enclosures will be placed in the NRC's Public Document Room.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards,
and Operations Support

Docket No. 030-32190
License No. 49-27356-01
IA 94-024

Enclosures:
1. Order
2. OI synopsis

cc w/enclosures: State of Wyoming

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
LARRY D. WICKS

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IA 94-024

ORDER PROHIBITING INVOLVEMENT IN
NRC-LICENSED ACTIVITIES
(EFFECTIVE IMMEDIATELY)

I

Larry D. Wicks is the President and Radiation Safety Officer for Western Industrial X-Ray Inspection Company, Inc. (WIX), Evanston, Wyoming. WIX holds License No. 49-27356-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 34. The license authorizes the licensee to possess sealed sources of iridium-192 in various radiography devices for use in performing industrial radiography in accordance with the conditions of the license. The license was suspended by NRC Order on June 16, 1994, and remains suspended while a hearing requested by the licensee is pending.

II

The suspension of License No. 49-27356-01 was based on the results of NRC staff inspections and Office of Investigations (OI) investigations of WIX conducted in April 1993 and in January and March 1994. These inspections and investigations identified numerous violations of NRC's radiation safety requirements, including some violations that were found to have recurred after being identified in previous inspections and some which were found to have been committed deliberately by Mr. Wicks and other employees of WIX. These violations were described in inspection reports 030-32190/93-01 and

030-32190/94-01 issued on May 12, 1994, and were the subject of an enforcement conference held April 1, 1994 in Arlington, Texas, during which Mr. Wicks was given the opportunity to provide additional information concerning each violation. In Investigation Report 4-93-017R, issued August 2, 1993, OI found three deliberate violations and in Report 4-93-049R, issued July 8, 1994, OI found four deliberate violations.

Based on its review of all available information, the NRC concludes that Mr. Wicks violated the provisions of 10 CFR 30.10, which prohibits individuals from deliberately causing a licensee to violate NRC requirements and from deliberately providing materially incomplete or inaccurate information to the NRC or to a licensee of the NRC. Specifically, as discussed below in more detail, the NRC concludes that: 1) Mr. Wicks deliberately failed to send an employee's thermoluminescent dosimeter (TLD) in for immediate processing after he learned of a radiography incident that occurred on July 31, 1993, a violation of 10 CFR 34.33(d); 2) Mr. Wicks deliberately failed to perform an evaluation of the same employee's radiation exposure after becoming aware of the incident, a violation of 10 CFR 20.201; 3) Mr. Wicks deliberately provided inaccurate information to NRC investigators about the July 31, 1993, incident and his follow-up to the incident, a violation of 10 CFR 30.10; and 4) During March, April, and July of 1993 and January 1994, Mr. Wicks deliberately failed to ensure that calibrated alarm ratemeters were provided and used by WIX radiography personnel, a violation of 10 CFR 34.33(f)(4).

The first three violations above are directly related to the July 31, 1993, radiography incident. That incident, which was reported to Mr. Wicks on the

date it occurred, by the two WIX employees who were involved in it, involved a radiation source in a radiographic exposure device not being properly returned to its shielded position before the device was moved by one of the employees. This resulted in the self-reading pocket dosimeter of one of the employees, a radiographer's assistant, going off-scale, indicating that the radiographer's assistant received a radiation exposure beyond the range of the pocket dosimeter.¹ When the pocket dosimeter of someone engaged in radiography is discharged beyond its normal range, NRC regulations in 10 CFR Parts 34 and 20, respectively, require: 1) that the licensee send the individual's TLD in for immediate processing to determine the individual's radiation exposure; and 2) that the licensee perform evaluations as necessary, whether or not a TLD reading is available, to determine the individual's radiation exposure and to ensure compliance with NRC exposure limits. In this case, the NRC concludes that Mr. Wicks deliberately did neither and that he has not been truthful in providing information about this incident to NRC personnel and others.

When the NRC began its investigation of this incident in January 1994, Mr. Wicks had no record of the radiographer's assistant's exposure for the day or month in question. Mr. Wicks stated during the investigation and at the enforcement conference that after learning of the incident he sent all TLDs worn by company personnel during the month of July 1993 in one package to Landauer, Inc., the company that processes TLDs for WIX, and that he included a note requesting immediate processing of the TLD worn by the radiographer's assistant. However, a representative of Landauer, Inc., stated to NRC

¹ Later reenactments of the incident resulted in an estimate that the radiographer's assistant received 6 rems, an exposure in excess of the NRC occupational quarterly limit of 3 rems in effect at the time of the incident.

personnel that while it had received TLDs from WIX for other employees for the month of July 1993, it had no record of receiving a TLD for the radiographer's assistant for that month and no record of receiving a request from Mr. Wicks for expedited processing of any TLDs sent in for that month. In fact, exposure records for the month of July 1993 and quarterly records for the months of July-September 1993 which were mailed by Landauer to WIX and retained by WIX contain no information regarding the radiographer's assistant's exposure for the month of July 1993 (her exposure records for all other months are available).²

Mr. Wicks told NRC investigators that he had never provided an exposure estimate to the radiographer's assistant because he had none to give her, i.e., he did not have a report from Landauer. However, this is inconsistent with statements by: 1) the radiographer's assistant that she persisted in trying to obtain from Mr. Wicks her exposure for the month of July and that Mr. Wicks eventually -- about three weeks after the incident -- told her she had received 350 millirem, 2) the radiographer involved in the incident that Mr. Wicks had informed him that "everything was OK" and that the radiographer's assistant had received 600 millirem for the quarter, and 3) the assistant's husband, also a WIX employee, that Mr. Wicks had called his wife two to three weeks after the incident and had given her a number "which was lower and we were happy."

² Mr. Wicks claims that he was unaware of this fact until the NRC questioned him in January 1994.

Mr. Wicks contended during the enforcement conference that he had been misled by the employees involved in the incident into believing that the incident was not serious. While both employees admit to providing Mr. Wicks false accounts of the incident in an attempt to cover up their own mistakes, the radiographer's assistant and her husband both told NRC investigators that Mr. Wicks was informed when the reports were turned in on July 31, 1993, that the reports were false and that Mr. Wicks was told that the radiographer involved in the incident had been asleep in the truck instead of supervising the radiographer's assistant (as required by NRC regulations). Mr. Wicks denied having been told that the reports were false.

Mr. Wicks also told NRC personnel during the enforcement conference that he did not realize that Landauer had not provided him a July 1993 exposure record for the radiographer's assistant and had not called Landauer until the NRC began its investigation in January 1994. The only explanation Mr. Wicks has offered for not pursuing the question of the radiographer's assistant's July 1993 exposure is that he was very busy. However, the following events raise significant questions about Mr. Wicks' credibility:

1. In August 1993, Mr. Wicks received Landauer's report for the month of July 1993 which, as indicated earlier, contained no monthly exposure record for the radiographer's assistant. Despite, according to Mr. Wicks, having requested immediate processing of the assistant's badge from Landauer, Mr. Wicks told the NRC investigator that he didn't read the monthly report.

2. Mr. Wicks stated at the enforcement conference that he placed the assistant on limited duty as soon as he was informed of the incident pending the receipt of a report from Landauer and that she was limited to working in the darkroom and "completely away from my shooting area" from July 31, 1993, until she left WIX toward the end of September 1993.³ Mr. Wicks stated that having an employee in a restricted status for nearly two months did not remind him of the fact that he had never received a response to his request for immediate processing of her July 1993 TLD.
3. On October 1, 1993, Mr. Wicks provided a summary of the radiographer's assistant's radiation exposure history, including the period in question (July 1993), to her new employer, an NRC licensee. In doing so, Mr. Wicks relied not on Landauer records, even though records were available for all months but July and September 1993, but by adding up daily dosimeter records, which were blank for July 31, 1993. Despite making these calculations for the radiographer's assistant, Mr. Wicks stated at the enforcement conference that he was not reminded of the fact that he had never received a response to his request for immediate processing of her July 1993 TLD.
4. Later in October 1993, Mr. Wicks responded to a request from the NRC for the radiation exposure reports of terminated employees, as required by

³ The NRC notes that the radiographer's assistant disputes Mr. Wicks' account, stating that she was permitted to resume work involving exposure to radiation about three weeks after the incident when Mr. Wicks called her and told her that her exposure was 350 millirems.

10 CFR 20.408(b). In responding to this request, Mr. Wicks did not provide a report for the radiographer's assistant despite having provided one for her husband, whose termination date occurred five days after hers. Mr. Wicks had not provided the NRC a termination report for the radiographer's assistant when the NRC began its investigation in January 1994.

Moreover, Mr. Wicks is an experienced radiographer and has been trained on the significance of overexposures. Considering that this appears to be the first time that his firm had the potential for an overexposure warranting immediate processing of the assistant's badge and assuming that the badge was sent as he states, then it is not credible that he would not have followed up on it. The NRC also does not consider credible Mr. Wicks' statement that he sent the TLD in for processing. According to Landauer, the incidence of TLDs being lost in delivery is very small. In this case, the loss of the radiographer's assistant's TLD in the mail is not an issue because Mr. Wicks has indicated on a number of occasions that he packaged all WIX TLDs together for shipment to Landauer and Landauer received the package. Landauer representatives have informed the NRC staff that all TLDs are electronically scanned upon receipt, and that Landauer employs the use of a data base to verify that TLDs which are scanned after processing match those which are scanned upon receipt. The process is designed to alert Landauer to situations in which a TLD is lost during processing. Landauer's automated reporting system includes controls to flag any TLD number which was scanned upon receipt and was not scanned again after processing. Lost TLDs are noted on dosimetry reports provided to Landauer customers.

Based on its review of the evidence gathered during its investigation, as well as the information obtained during the enforcement conference, the NRC concludes that Mr. Wicks did not send the radiographer's assistant's TLD in for processing; that Mr. Wicks deliberately failed to conduct an evaluation of this individual's radiation exposure from the incident; and that Mr. Wicks deliberately provided false information regarding the incident to the NRC and false information regarding the individual's radiation exposure history to another licensee of the NRC.

In addition, with regard to the NRC's requirement that all radiography personnel be equipped with alarm ratemeters that have been calibrated at periods not to exceed one year, the NRC's investigations found that Mr. Wicks repeatedly failed to ensure that this requirement was met. This violation was first discovered and discussed with Mr. Wicks following an inspection and investigation in April 1993. When the NRC conducted its investigation beginning in January 1994, this same violation was found to have occurred in July 1993, two months after it was first discussed with Mr. Wicks, and again in January 1994 when Mr. Wicks could not produce current calibration records for alarm ratemeters worn by either of two radiography personnel on January 18, 1994. When questioned by NRC investigators, Mr. Wicks provided conflicting statements as to whether he had even supplied ratemeters to his radiographers but he said he understood it was his responsibility to ensure that alarm ratemeters were calibrated. Given the repetitive nature of this violation and Mr. Wicks' knowledge of this requirement, the NRC concludes that Mr. Wicks deliberately caused the licensee to violate this requirement.

III

Based on the above, the NRC staff concludes that Larry D. Wicks, President and Radiation Safety Officer for WIX, has engaged in deliberate misconduct that has caused the Licensee to be in violation of 10 CFR 34.33(d), 34.33(f)(4), and 20.201. It further appears that Mr. Wicks has deliberately provided to NRC personnel and to another licensee of the NRC information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.10. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects.

Mr. Wicks' actions in causing the Licensee to be in deliberate violation of radiation safety requirements and his misrepresentations to the NRC have raised serious doubts as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC. NRC confidence in Mr. Wicks' conducting NRC-licensed activities safely and in compliance with NRC requirements is further eroded by the fact that he was the President of the company and the Radiation Safety Officer when he engaged in deliberate misconduct. In both of these positions, particularly in his role as the Radiation Safety Officer, Mr. Wicks is relied upon by the NRC to ensure that all radiation safety requirements are met. Conduct of this nature cannot and will not be tolerated by the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, if Mr. Wicks

were permitted at this time to engage in NRC-licensed activities. Therefore, the public health, safety and interest require that Larry D. Wicks be prohibited from engaging in NRC-licensed activities (including any supervising, training, or auditing) for either an NRC licensee or an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20 for a period of five (5) years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations and conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR 30.10, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

1. Larry Dale Wicks is prohibited for five years from the date of this Order from engaging in NRC-licensed activities, except as provided in item 3, below. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including but not limited to, those activities of Agreement State licensees conducted pursuant to the authority by 10 CFR 150.20.

2. The first time Mr. Wicks is employed in NRC-licensed activities following the five-year prohibition, he shall notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D. C. 20555 and the Regional Administrator, NRC Region IV, at least five days prior to the performance of licensed activities (as described in 1 above). The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement that Mr. Wicks is committed to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.
3. Mr. Wicks is permitted to conduct licensed activities only as necessary to maintain licensed material in the possession of Western Industrial X-Ray Inspection Company in safe storage and transfer the material to an authorized recipient.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Wicks of good cause.

V

In accordance with 10 CFR 2.202, Mr. Wicks must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this

Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Wicks or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Wicks if the answer or hearing request is by a person other than Mr. Wicks. If a person other than Mr. Wicks requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Wicks or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Wicks, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including

the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION


Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 27th day of September 1994

SYNOPSIS

On January 27, 1994, the Nuclear Regulatory Commission, Region IV, Office of Investigations, initiated an investigation to determine whether a radiographer deliberately allowed a radiographer's assistant to work without supervision and whether the licensee deliberately failed to evaluate a potential overexposure incident. During the conduct of the investigation, it was alleged a false report regarding the potential overexposure was deliberately submitted to the licensee by the radiographer and the radiographer's assistant. During the conduct of this investigation, there were additional allegations that the licensee had deliberately failed to provide calibrated alarm ratemeters to radiographers and the licensee's radiographers had deliberately failed to supervise radiographer's assistants.

Evidence developed during the investigation substantiated the allegation that a radiographer deliberately allowed a radiographer's assistant to perform radiographic operations without proper supervision, and the licensee deliberately did not conduct an evaluation of a potential overexposure incident. Additionally, this investigation determined that a radiographer and a radiographer's assistant deliberately prepared and submitted false reports about the potential overexposure incident to the licensee. This investigation further determined that on January 18, 1994, the licensee deliberately failed to provide calibrated alarm ratemeters to a radiographer and radiographer's assistant. This investigation determined that in a separate incident from that previously addressed, there was insufficient evidence to establish that the licensee's radiographers had deliberately failed to supervise radiographer's assistants while conducting radiographic operations.

November 16, 1995

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Peter B. Bloch, Chairman
Dr. Jerry Kline
Dr. Charles Kelber

In the Matter of

WESTERN INDUSTRIAL X-RAY
INSPECTION CO., INC.

and

LARRY D. WICKS

Docket Nos. 30-32190-EA
30-32190-EA-2

ASLBP Nos. 94-699-09-EA
95-702-01-EA-2

FINAL INITIAL ORDER
(Approval of Settlement and Dismissal)

Western Industrial X-Ray Inspection Co., Inc. (WIX), Larry D. Wicks, and the Staff of the United States Nuclear Regulatory Commission (Staff) have reached an agreement in settlement of these proceedings, the terms of which agreement are set forth in full in Attachment A, "Stipulation for Settlement of Proceedings." After studying this agreement, the Atomic Safety and Licensing Board had some questions concerning the appropriateness of the settlement. Accordingly, it held a transcribed teleconference, on November 3, 1995, which resolved the Board's questions.

In the course of the teleconference, we became satisfied:

- WIX has an adequate reason for selecting Mr. Heath as Radiation Safety Officer. Though he is not a trained RSO, he has an engineering degree and radiography background and will be required to take appropriate training. Paragraph 5 of the Settlement Agreement provides further assurance by requiring audits of operations. The Staff is satisfied with this arrangement. Tr. 17-19.
- Mr. John Phillips, who has a 1/3 financial interest in the company and is the company lawyer and a local municipal court judge, will take management responsibility. Mr. Larry Wicks will be restricted to a role in sales and business acquisition and as an advisor to Mr. Phillips about commercial practices in the industry. Mr. Wicks will not play any role in employee evaluation. Tr. 20-25, 29-30, 30-32.
- Although Mr. Wicks may be reinstated in WIX after two years upon application to the Staff, this process will not be automatic and will entail Staff discretion. Tr. 25-29, 32-33, 34.

1. ORDER

For all the foregoing reasons and upon consideration of the entire record in this matter, it is this 15th day of November, 1995, ORDERED, that:

1. The Western Industrial X-Ray Inspection Co., Inc. (WIX) motions to withdraw its requests for hearing are granted. The withdrawn requests for hearing relate to (a) the Staff's Order to WIX of June 16, 1994 ("Order Suspending License (Effective Immediately) and Demand for Information," 59 Fed. Reg. 33027 (June 27, 1994) ("Suspension Order"), dated July 1, 1994, and (b) the Staff's Orders to WIX of September 27, 1994 ("Order to Transfer Material (Effective Immediately) and Order Revoking License" 59 Fed. Reg. 50931 (October 6, 1994) ("Revocation Order"), dated October 14, 1994.

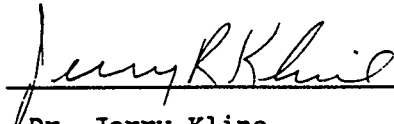
2. WIX is dismissed as a party in the proceedings pertaining to those Orders and to this proceeding.

3. The motion of Larry Wicks to withdraws his request for hearing on the Staff's Order to Mr. Wicks of September 27, 1994 ("Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)," 59 Fed. Reg. 50932 (October 6, 1994) ("Prohibition Order"), dated October 14, 1994, is granted.

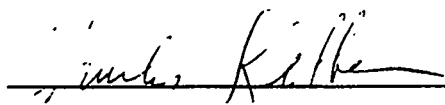
4. Mr. Wicks is dismissed as a party in the proceeding pertaining to that Order.

5. The "Stipulation for Settlement of Proceedings," contained in Attachment A to this Memorandum and Order is adopted as an Order of this Atomic Safety and Licensing Board.

THE ATOMIC SAFETY AND LICENSING BOARD



Dr. Jerry Kline
Administrative Judge



Dr. Charles Kelber
Administrative Judge



Peter B. Bloch
Chairman

Rockville, Maryland

11/2/95

Attachment A¹

STIPULATION FOR SETTLEMENT OF PROCEEDINGS²

THIS AGREEMENT is made by and between Western Industrial X-Ray Inspection Co., Inc. ("WIX" or the Licensee"), Larry D. Wicks ("Wicks") and the Staff of the United States Nuclear Regulatory Commission ("NRC Staff" or "Staff"), to wit:

WHEREAS WIX holds Byproduct Material License No. 49-27356-01 issued by the NRC pursuant to 10 C.F.R. Parts 30 and 34, which license authorizes WIX to possess sealed sources of iridium-192 in various radiography devices for use in performing industrial radiography activities in accordance with the conditions specified therein, and is due to expire on August 31, 1996; and

¹The heading contained in the stipulation of the parties has been omitted as redundant. Page numbers have been changed for consistency with this document.

²In the course of the Teleconference of November 3, the Board admitted two exhibits. Tr. 16. On further consideration, it is not necessary that those exhibits be admitted. This Attachment is sufficient. Accordingly, the two Board exhibits shall not be admitted. This Order and its attachment may be read in conjunction with the official Transcript. No further exhibits are necessary.

WHEREAS Wicks is and has been at all times relevant hereto the principal shareholder, President, and Radiation Safety Officer ("RSO") of WIX, with responsibilities, *inter alia*, involving compliance with NRC requirements for radiation protection; and

WHEREAS on June 16, 1994, the NRC Staff issued an "Order Suspending License (Effective Immediately) and Demand for Information," 59 Fed. Reg. 33027 (June 27, 1994) ("Suspension Order"), based, *inter alia*, upon a finding that WIX had engaged in numerous violations of NRC radiation safety regulatory requirements, including several violations which were found to be of a recurring nature and/or were committed deliberately by Licensee employees, including WIX's President and RSO, in violation of 10 C.F.R. § 30.10; and

WHEREAS the Suspension Order suspended License No. 49-27356-01, pending further order, effective immediately, and also demanded information from the Licensee in order to assist the NRC in determining whether the license should be revoked and whether Wicks should be prohibited from performing NRC-licensed activities; and

WHEREAS on September 27, 1994, the NRC Staff issued (1) further Orders directed to WIX, "Order to Transfer Material (Effective Immediately) and Order Revoking License" 59 Fed. Reg. 50931 (October 6, 1994) ("Revocation Order"); and (2) an Order directed to Wicks, "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immedi-

ately)," 59 Fed. Reg. 50932 (October 6, 1994) ("Prohibition Order"), based, *inter alia*, upon a finding that the NRC lacked adequate assurance that the public health and safety would be protected if WIX retains possession of licensed material, or if licensed activities are conducted by WIX and/or its President and RSO in the future; and

WHEREAS the Revocation Order required the Licensee, *inter alia*, to transfer all NRC-regulated material in its possession to the manufacturer or other person authorized to possess the material and revoked License No. 49-27356-01, effective immediately; and

WHEREAS the Prohibition Order, *inter alia*, prohibited Wicks from engaging in NRC-licensed activities (including any supervising, training or auditing) for either an NRC licensee or Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 C.F.R. § 150.20 for a period of five (5) years from the date of that Order; and

WHEREAS requests for hearing were filed by WIX concerning the Suspension Order and Revocation Order on July 1 and October 14, 1994, respectively, and a request for hearing was filed by Wicks concerning the Prohibition Order on October 14, 1994, in response to which adjudicatory proceedings have been convened and remain pending before an Atomic Safety and Licensing Board ("Licensing Board") at this time; and

WHEREAS the undersigned parties recognize that certain advantages and benefits may be obtained by each of them through settlement and compromise of the matters now pending in litigation between them, including, without limitation, the elimination of further litigation expenses, uncertainty and delay, and other tangible and intangible benefits, which the parties recognize and believe to be in the public interest; and

WHEREAS, pursuant to 10 C.F.R. § 2.203, the Staff, WIX and Wicks have stipulated and agreed to the following provisions for settlement of the above-captioned proceedings, subject to the approval of the Licensing Board, before the taking of any testimony or trial or adjudication of any issue of fact or law; and

WHEREAS WIX and Wicks are willing to waive their hearing and appeal rights regarding these matters, in consideration of the terms and provisions of this Stipulation and settlement agreement; and

WHEREAS the terms and provisions of this Stipulation, once approved by the Licensing Board, shall be incorporated by reference into an order, to be issued in accordance with subsections b, I and o of section 161 of the Atomic Energy Act of 1954, as amended (the "Act"), 42 U.S.C. § 2201, and into License No. 49-27356-01, issued pursuant to section 81 of the Act, 42 U.S.C. § 2111, and shall be subject to

enforcement pursuant to the Commission's regulations and Chapter 18 of the Act, 42 U.S.C. § 2271 et seq.;

NOW, THEREFORE, IT IS STIPULATED AND AGREED AS FOLLOWS:

1. Wicks agrees to refrain from engaging in, and is hereby prohibited from engaging in, any NRC-licensed activities up to and including June 15, 1999, five years from the date of the NRC "Order Suspending License (Effective Immediately)," dated June 16, 1994. For purposes of this Stipulation and Agreement, the definition of "NRC-licensed activities," as set forth above, is understood to include any and all activities that are conducted pursuant to a specific license issued by the NRC or general license conferred by NRC regulations, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 C.F.R. § 150.20, but does not include marketing, other business activities or ownership of an interest in WIX.

2. For a period of five years after the above-specified five-year period of prohibition has expired, i.e., from June 16, 1999 through June 15, 2004, Wicks shall, within 20 days of his acceptance of each and any employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined above, provide written notice to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011, of the name,

address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities, and a detailed description of his duties and the activities in which he is to be involved.

3. In the first notification provided pursuant to Paragraph 2 above, Wicks shall include a statement of his commitment to compliance with NRC regulatory requirements and an explanation of the basis why the Commission should have confidence that he will comply with applicable NRC requirements.

4. Notwithstanding the above, it is understood that Wicks may request reconsideration of the Prohibition Order after WIX has conducted two (2) years of resumed NRC-licensed activities, however, it is understood that the NRC Staff shall have the sole discretion to determine whether any such reconsideration is warranted, with respect to which determination Wicks hereby waives any right to or opportunity for hearing or appeal before the NRC and/or a court of law.

5. It is hereby agreed by the parties that WIX shall be allowed to resume its conduct of NRC-licensed activities upon approval of this Stipulation and Agreement by the Licensing Board, but it is expressly understood and agreed that Wicks is prohibited from participation in the conduct of any such activities in accordance with Paragraph 1 above. In furtherance of this understanding, WIX and Wicks further agree that License No. 49-27356-01 shall be modified

to include the following requirements, prior to any resumption of NRC-licensed activities, which shall remain in effect up to and including June 15, 1999 or until such other time as may be explicitly stated herein:

(a) WIX (1) shall retain Mr. Ray Heath, or other person approved by the NRC Staff to serve as RSO or successor RSO until at least June 15, 1999, who shall at all times be responsible for performing the duties of an RSO and shall be responsible for maintenance of all NRC-required records; (2) shall establish the minimum number of hours to be devoted to RSO duties; and (3) shall describe the responsibilities and audits to be performed by the RSO under the radiation safety program. WIX shall submit the qualifications of any person it proposes to serve as RSO, other than Mr. Heath, to the NRC Staff for prior approval; the statement of qualifications should demonstrate that the person has not previously been employed by WIX, that he/she is likely to exercise independence from Wicks, and that he/she meets the NRC's minimum criteria established for an RSO.

(b) Prior to restart, Mr. Heath (if he is selected by WIX to serve as RSO) must successfully complete an Industrial Radiography course

of at least 40 hours duration. Within six months of restart, Mr. Heath must successfully complete a Radiography Radiation Safety Officer training course of at least three days duration. Courses selected by the licensee to satisfy this condition must receive prior approval by NRC Region IV.

(c) If Mr. Heath is selected to serve as RSO, WIX shall name an Assistant Radiation Safety Officer to the license. The designated Assistant RSO must have at least five years experience as an industrial radiographer. The assistant RSO shall be readily available to respond to incidents and emergencies and shall be on call by means of a pager, telephone, or radio at all times when radiographic operations are scheduled or in progress.

(d) If Mr. Heath is selected to serve as RSO, the RSO and Assistant RSO shall be identified by name on the license. An Assistant RSO shall be carried on the license until Mr. Heath has gained the appropriate practical radiography training and experience, or a minimum of one year.

(e) The RSO shall have full authority for radiation protection and safety, entirely inde-

pendent from any involvement or interference by Wicks, with full authority to direct all aspects of radiography operations including the authority to shut down operations that are unsafe or which violate the license or NRC requirements. The RSO shall report to the person who is retained pursuant to paragraph 5(g) below, and the RSO shall have the authority to report any concerns directly to the NRC. The RSO shall notify the NRC immediately if Wicks participates or becomes involved in any NRC-licensed activities, or interferes with the RSO's independence in any way.

(f) The RSO shall certify to the NRC Staff in advance of commencing NRC-licensed activities that he/she understands (1) the terms of this Stipulation and Agreement, the license requirements, and the Commission's regulations associated with radiography, (2) that he/she may be held personally accountable for violations of the license or Commission requirements under 10 C.F.R. § 30.10 for deliberate misconduct, (3) that he/she is responsible for making reports required by NRC regulations, and (4) that Wicks is prohibited from having any involvement in NRC-licensed activities, and that the RSO is

required to notify the NRC immediately if Wicks participates or becomes involved in any NRC-licensed activities, or interferes with the RSO's independence in any way.

(g) WIX will retain the services of a person, to be approved in advance by the NRC Staff, to be responsible for management of those aspects of the company's business that could affect the RSO or the conduct of radiation safety-related activities, including the authority (1) to hire and terminate the employment of the RSO or other employees engaged in the conduct of NRC-licensed activities, (2) to make and execute salary and other financial decisions which may affect such persons including the RSO, and/or the safe conduct of NRC-licensed activities, and (3) to have control over financial resources (e.g., through the establishment of an escrow account) sufficient to ensure the safe and proper conduct of NRC-licensed activities. This individual shall also notify the NRC immediately if he/she determines that Wicks is or has been involved in NRC-licensed activities.

(h) Neither Wicks nor any person related to, or in privity with, him shall have any direct or indirect involvement in or exercise control over

NRC-licensed activities, including management, supervision and financial control or participation in hiring and firing decisions which may affect the RSO and/or the safe and proper conduct of NRC-licensed activities. In addition, while Beverly Wicks (Wicks' wife) may continue to serve as WIX' secretary, she shall not participate in or have any involvement in NRC-licensed activities (including, without limitation, such tasks as mailing and receiving film badges or radiation exposure reports, handling or distributing dosimeters, and any other tasks related to radiation safety).

(I) WIX shall retain an outside independent auditor (and any successor auditor), who is to be approved in advance by the NRC Staff based upon a review of the auditor's qualifications. The auditor (and any approved successor) shall submit an audit plan for NRC approval that describes the items to be audited and the methodology to be employed, including the number of field inspections and the percentage of employees engaged in radiography who will be audited in the field. The auditor is to provide copies of all draft and final audit reports to the NRC Staff at the same time that such reports are

provided to WIX. WIX shall provide a written response to the audit findings within 30 days after receipt thereof, including a description of any corrective actions taken or an explanation of why such actions were not taken. The auditor shall perform audits and examinations of the radiation safety program and operations, including the performance of field audits, as follows: An independent program audit will be performed at about three months, and no later than six months, following the resumption by WIX of NRC-licensed activities, with the results of the audit submitted to NRC Region IV for review. Following the initial audit, audits will be performed every six months. One year after restart, the NRC RIV Regional Administrator may consider, at the request of the licensee, relief in the audit requirements based on good cause shown. Further, the timing and scope of such audits shall not be disclosed to WIX or Wicks in advance; and the auditor shall be informed in advance that Wicks is prohibited from participation in any NRC-licensed activities.

(j) Any notification required to be made pursuant to this Paragraph 5 shall be made in writing to the Regional Administrator, NRC Re-

gion IV, 611 Ryan Plaza Drive, Suite 400, Arlington, TX 76011.

(k) The Regional Administrator, NRC Region IV, may relax or rescind any of the conditions set forth in this Stipulation and Agreement upon a demonstration of good cause, however, it is understood that the Regional Administrator shall have the sole discretion to determine whether any such reconsideration is warranted, with respect to which determination WIX and Wicks hereby waive any right to or opportunity for hearing or appeal before the NRC and/or a court of law.

6. The parties agree that, as an integral part of this Stipulation and upon execution hereof, and subject to the approval of this Stipulation by the Licensing Board, (a) WIX and Wicks will withdraw their July 1 and October 14, 1994 requests for hearing on the Suspension Order, Revocation Order and Prohibition Order, and (b) the parties will file a joint request for dismissal of the proceedings on the Suspension Order, Revocation Order and Prohibition Order, with prejudice, it being understood and agreed that this Stipulation and Agreement resolves all outstanding issues with respect to those Orders, that WIX and Wicks hereby waive their hearing and appeal rights regarding the matters which are the subject of these Orders, and that the Staff will take

no further enforcement or other action against WIX or Wicks in connection with those Orders, subject to the terms of this Stipulation and Agreement.

7. WIX and Wicks hereby agree that a failure on their part to comply with the terms of this Stipulation and Agreement will constitute a material breach of this Agreement, and that any such breach may result in the immediate revocation or suspension of the license, effective immediately, if the NRC Staff, in its sole discretion, determines such action to be appropriate, and may result in further enforcement or other action as the NRC Staff may determine, in its sole discretion, to be appropriate.

8. It is understood and agreed that nothing contained in this Stipulation and Agreement shall relieve the Licensee from complying with all applicable NRC regulations and requirements. Further, it is understood and agreed that nothing contained in this Agreement shall be deemed to prohibit the NRC Staff from taking enforcement or other action (a) against any entity or person for violation of this Stipulation and Agreement, or (b) against persons other than WIX or Wicks in connection with or related to any of the matters addressed in the Suspension Order, Revocation Order or Prohibition Order, should the Staff determine, in its sole discretion, that it is appropriate to do so.

9. It is understood and agreed that this Stipulation and Agreement is contingent upon prior approval by the

Licensing Board and dismissal of the instant adjudicatory proceedings.

10. This Stipulation and Agreement shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, we set our hand and seal this 2nd day of November, 1995.³

FOR WESTERN INDUSTRIAL X-RAY
INSPECTION CO., INC., and
LARRY D. WICKS:

FOR THE NRC STAFF:

Larry D. Wicks, individually and
as President, Western Industrial
X-Ray Inspection Co., Inc.

Sherwin E. Turk
Counsel for NRC Staff

John C. Phillips
Counsel for Western Industrial
X-Ray inspection Co., Inc.
and Larry D. Wicks

³The signed original was filed with the Board.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

LARRY D. WICKS

(EVANSTON, WYOMING)

Docket No.(s) IA-94-024

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing FINAL INITIAL ORDER-LBP-95-22 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Office of Commission Appellate
Adjudication
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board
Mail Stop T-3 F 23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the General Counsel
Mail Stop 0-15 B 18
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Peter B. Bloch, Chairman
Atomic Safety and Licensing Board
Mail Stop T-3 F 23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Charles M. Kelber
Atomic Safety and Licensing Board
Mail Stop T-3 F 23
U.S. Nuclear Regulatory Commission
Washington, DC 20555

John C. Phillips, Esq.
Counsel for Larry D. Wicks
Phillips Law Offices
912 Main Street
Evanston, WY 82931

Dated at Rockville, Md. this
16 day of November 1995


Office of the Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 27, 1995

IA 95-022

Marc W. Zuverink
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC (OI REPORT NO. 3-94-061)

Dear Mr. Zuverink:

The enclosed Order is being issued as a result of an investigation by the NRC Office of Investigations (OI) which found that you stole NRC-licensed material, hydrogen-3 (tritium), from the facility of Cammenga Associates, Holland, Michigan, and that you gave the material to members of the public. In doing so, you deliberately acquired, possessed, and transferred NRC-licensed material without an NRC license and needlessly exposed members of the public to radiation. The violation is fully described in the enclosed Order.

The Order prohibits your involvement in NRC-licensed activities for a period of ten years from the date of the Order. In addition, for a period of five years after the ten year prohibition period, the Order also requires you to notify the NRC within 20 days of your employment or involvement in licensed activities. Pursuant to Section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order is subject to criminal prosecution as set forth in that section.

You are required to respond to this Order and should follow the instructions specified in Section VI of the Order when preparing your response. Questions concerning this Order should be addressed to James Lieberman, Director, Office of Enforcement, who can be reached at telephone number (301) 415-2741.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, with your address removed, and the enclosure will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy information or proprietary information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Marc W. Zuverink

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The responses directed by this letter and the enclosed Order are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Action of 1980, Public Law No. 96-511.

Sincerely,



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Docket No. 030-33009
License No. 21-26460-01

Enclosure:
Order Prohibiting Involvement in NRC
Licensed Activities

cc w/enclosure:
Edith A. Landman
Assistant U.S. Attorney
Michael P. McDonald
Attorney for Mr. Zuverink
Cammenga Associates, Inc.

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of
MARC W. ZUVERINK
Holland, Michigan

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)
)
)

IA 95-022

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES AND
REQUIRING CERTAIN NOTIFICATION TO NRC

I

Cammenga Associates, Inc. (Cammenga or Licensee) holds Byproduct Material License No. 21-26460-01 issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on September 27, 1993. The license authorizes the use of byproduct material, hydrogen-3 (tritium), in sealed vials for the production of tritium radioluminescent devices. The license is due to expire on January 31, 1998. From July 29, 1994, to September 16, 1994, Marc W. Zuverink was contracted to Cammenga through a temporary hiring service.

II

The Licensee trained Mr. Zuverink as a radiation worker. The training included a discussion of potential sanctions against employees who misused, mishandled, or stole radioactive material. Mr. Zuverink's answers on a comprehensive written exam given by the Licensee indicate that he was aware of potential civil and criminal penalties for employees who deliberately violate federal regulations or license requirements governing the use of tritium. The radiation safety training allowed Mr. Zuverink to enter the Licensee's restricted area and to have access to licensed material as part of the process

of manufacturing tritium illuminated compasses under contract to the United States military.

III

On September 30, 1994, the Licensee undertook an inventory of NRC-licensed material in its possession. Upon completion, the inventory determined that 1099 vials, containing a total of 49.11 curies of tritium, were missing. The Licensee notified the NRC and the Ottawa County, Michigan, Sheriff's Department. An inspection was conducted by NRC Region III personnel on October 7 and 8, 1994, to evaluate the radiological consequences of the missing material and to monitor the retrieval of the tritium sources. Investigations were conducted by the NRC Office of Investigations (OI), the Ottawa County Sheriff's Department, and the Department of Defense Criminal Investigation Service.

Mr. Zuverink admitted to the investigators that he took tritium vials and completed compasses with tritium inserts from the Licensee on more than one occasion. The largest theft apparently took place on September 10, 1994, when he took nine bags of vials from the Licensee, each bag containing 100 vials of tritium, 50 millicuries per vial. Mr. Zuverink stated that he gave the tritium vials and compasses to various members of the public, including approximately 100 vials (5,000 millicuries) to a teenage skateboarder whom he did not know. Mr. Zuverink also admitted that he crushed a tritium vial on a kitchen table at his home in the presence of another individual. This action contaminated the tabletop and caused the other individual to receive a minor

tritium uptake (internal tritium contamination). Minor contamination of a countertop and tables was also found in a restaurant where Mr. Zuverink had given one or more vials to another member of the public. Mr. Zuverink was able to arrange for the return of 548 tritium vials, leaving 551 vials unaccounted for (401 vials at 50 millicuries, 57 vials at 25 millicuries, and 93 vials at 5 millicuries).

OI also found that Mr. Zuverink made false statements to an OI investigator and an NRC inspector during an interview on October 7, 1994. During that interview, Mr. Zuverink stated that he never had any tritium vials at his home, had given tritium vials to only two individuals, and had stolen only one compass. These statements were contradicted by Mr. Zuverink's sworn testimony on October 17, 1994.

Mr. Zuverink's acquisition, possession and transfer of NRC-licensed material, tritium, is a deliberate violation of 10 CFR 30.3, "Activities requiring license." 10 CFR 30.3 requires that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license. Mr. Zuverink was not authorized in a specific or general license to acquire, possess or transfer byproduct material, including tritium.

Pursuant to a plea arrangement dated February 3, 1995, Mr. Zuverink agreed to plead guilty in the U. S. District Court for the Western District of Michigan to one criminal count of violating 18 U.S.C. 641, a misdemeanor. Specifically, the agreement describes the charge as stealing compasses,

containing the radioactive substance tritium, which belonged to the United States and which were manufactured under contract for the United States. As a result, on April 18, 1995, a judgment was entered whereby Mr. Zuverink was sentenced to serve one year in federal custody, pay a fine of \$500, make restitution to Cammenga in the amount of \$1,000, and pay a \$25 special assessment to the court.

IV

Based on the above, the NRC concludes that Marc W. Zuverink engaged in deliberate misconduct that constituted a violation of 10 CFR 30.3 when he stole and transferred NRC-licensed material. The NRC must be able to rely on its licensees, and the employees of licensees and licensee contractors, to comply with NRC requirements, including the requirement that licensed material cannot be acquired, possessed or distributed without a specific or general license. The deliberate violation of 10 CFR 30.3 by Marc W. Zuverink, as discussed above, has raised serious doubt as to whether he can be relied on to comply with NRC requirements.

Consequently, I lack the requisite assurance that Marc W. Zuverink will conduct licensed activities in compliance with the Commission's requirements or that the health and safety of the public will be protected if Marc W. Zuverink were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that for a period of ten years from the date of this Order, Marc W. Zuverink be prohibited from any involvement in NRC-licensed activities for either: (1) an

NRC licensee, or (2) an Agreement State licensee performing licensed activities in areas of NRC jurisdiction in accordance with 10 CFR 150.20. In addition; for a period of five years commencing after the ten year period of prohibition, Mr. Zuverink must notify the NRC of his employment or involvement in NRC-licensed activities to ensure that the NRC can monitor the status of Mr. Zuverink's compliance with the Commission's requirements and his understanding of his commitment to compliance.

V

Accordingly, pursuant to sections 81, 161b, 161i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Marc W. Zuverink is prohibited for a period of ten years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.
2. For a period of five years, after the above ten year period of prohibition has expired, Marc W. Zuverink shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph V.1 above, provide notice to the Director, Office of

Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Marc W. Zuverink shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Zuverink of good cause.

VI

In accordance with 10 CFR 2.202, Marc W. Zuverink must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 45 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Zuverink or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, NRC Region III, 801

Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first such notification, Marc W. Zuverink shall include a statement of his commitment to compliance with regulatory requirements and the basis as to why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Zuverink of good cause.

VI

In accordance with 10 CFR 2.202, Marc W. Zuverink must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 45 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Zuverink or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U. S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20055, and to the Regional Administrator, NRC Region III,

801 Warrenville Road, Lisle, Illinois 60632-4531, if the answer or hearing request is by a person other than Mr. Zuverink. If a person other than Mr. Zuverink requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by the Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Zuverink or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Since Mr. Zuverink is currently in Federal custody, if a hearing is requested, the Commission will not act on the hearing request until Mr. Zuverink is released from Federal custody. If Mr. Zuverink requests a hearing, the hearing request will not be granted unless Mr. Zuverink: (1) notifies the Secretary, U.S. Nuclear Regulatory Commission, at the address given above, within 20 days of his release from Federal custody, that he has been released from Federal custody; and (2) provides in the notice his then-current address where he can be contacted and a statement that he continues to desire the hearing. A copy of the notice shall also be sent to the Director, Office of Enforcement, and the Assistant General Counsel for Hearings and Enforcement, at the address given above.

In the absence of any request for hearing, the provisions specified in Section V above shall be effective and final 45 days from the date of this Order without further order or proceedings. In the event that Mr. Zuverink makes the sole request for a hearing and fails to comply with the notification

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requirements above, the provisions specified in Section V above shall be effective and final 20 days after he is released from Federal custody.

FOR THE NUCLEAR REGULATORY COMMISSION



Hugh L. Thompson, Jr.
Deputy Executive Director for
Nuclear Materials Safety, Safeguards
and Operations Support

Dated at Rockville, Maryland
this 27th day June 1995

B- NOTICES OF VIOLATION



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION IV

611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-8064

April 1, 1997

IA 97-010

Mr. David Kirkland
[Address removed pursuant
to 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION (NRC Inspection Report No. 030-03509/96-01; NRC
Investigation Report 4-96-029)

Dear Mr. Kirkland:

This refers to the predecisional enforcement conference conducted with you on February 27, 1997, in the NRC Region IV's Walnut Creek Field Office. This conference was conducted to discuss an apparent, deliberate failure to follow procedures which require that a written directive be signed by an authorized user prior to administering radioactive material to a patient. The apparent violation and the circumstances surrounding it were investigated in an NRC Office of Investigations (OI) investigation concluded on January 23, 1997, and described in an inspection report issued on February 11, 1997.

Based on the information developed during the inspection and investigation, and the information provided during the conference, the NRC has determined that a violation of the NRC's rule prohibiting deliberate misconduct occurred. This violation is cited in the enclosed Notice of Violation and involves your deliberate failure to obtain a signature of an authorized user on a written directive prior to administering sodium iodide iodine-131 to a patient on June 20, 1996. A dosage of approximately 6.6 millicuries of I-131 was administered, significantly more than the intended dosage of 100 microcuries of I-131 for a thyroid scan.

The NRC has concluded that you deliberately proceeded with the administration of this dosage without a written directive signed by an authorized user. At the enforcement conference, you stated that you did not obtain the authorized user's signature on the written directive because the patient was apprehensive and you feared that the patient would not tolerate the time delay required to obtain the signature. However, your actions circumvented the very purpose of having an authorized user sign and complete the written directive, as well as the intent of the hospital's NRC-required quality management program. As discussed in the inspection report, the NRC's medical consultant reviewed this misadministration and found that the impact of this misadministration on this particular patient's health should be negligible, with no long-term disability.

Nonetheless, the violation in this case, given its deliberate nature and the potential for patient harm from such a failure, is a matter of significant regulatory concern and is categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

You reported this misadministration to the NRC by telephone on June 21, 1996, and acknowledged at that time that you had administered the dosage without the signature of an authorized user. Your employer, Fairbanks Memorial Hospital, took several corrective actions, including suspending you and removing you from duties involving nuclear medicine. At the conference, you stated that you took full responsibility for the incident, that it was an isolated incident, and that it will not recur.

Given your former position as radiation safety officer, one in which the NRC places a great deal of reliance for assuring compliance, the NRC considered whether stronger enforcement action should be taken against you. However, given your actions in reporting this incident to the NRC, including your acknowledgement from the beginning that you had not obtained the signature of an authorized user, the disciplinary action taken by your employer, and your acceptance of full responsibility for this incident, we have determined that a Notice of Violation is sufficient. The NRC is not taking any action that would restrict your future involvement in NRC-regulated activities. However, you should be aware that any future similar violation may subject you to more significant enforcement action, including prohibiting your involvement in licensed activities and criminal sanctions.

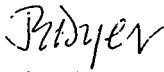
In addition, as a result of your actions, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,500 is being issued to Fairbanks Memorial Hospital. A copy of that action is enclosed.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed in the transcript of the February 27, 1997 enforcement conference. Therefore, you are not required to respond to this letter unless you believe that the description therein does not adequately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed notice.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and any response will be placed in the NRC Public Document Room (PDR). Your home address will be removed from all documents before placement in the PDR.

Should you have any questions about this action, please contact Ms. Linda Howell at (817) 860-8213.

Sincerely,


for Ellis W. Merschoff
Regional Administrator

Enclosures: (see next page)

David A. Kirkland

- 3 -

Enclosures:

1. Notice of Violation
2. Notice of Violation and Proposed
Imposition of Civil Penalty to
Fairbanks Memorial Hospital

cc w/Enclosure 1:

Mike Powers, Administrator
Fairbanks Memorial Hospital
1650 Cowles Street
Fairbanks, Alaska

State of Alaska

NOTICE OF VIOLATION

David W. Kirkland

IA 97-010

During an NRC inspection conducted between June 26, 1996, and February 6, 1997, and an NRC Office of Investigations (OI) investigation concluded on January 23, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 30.10(a)(1) states, in part, that any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission.

10 CFR 30.10(c)(2) specifies, in part, that deliberate misconduct by a person means an intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, or policy of a licensee.

10 CFR 35.25(a)(2) requires, in part, that a licensee that permits the use of byproduct material by an individual under the supervision of an authorized user shall require the supervised individual to follow the written quality management procedures established by the licensee.

Fairbanks Memorial Hospital's written quality management program states, at Item II.A, that a written directive specific for each patient will be issued by an authorized user prior to administration of any dosage of sodium iodide I-131 in excess of 30 microcuries. The directive will include identification of the radiopharmaceutical, the dosage to be administered, and the route of administration if other than I-131, and will be signed by the authorized user.

Contrary to the above, on June 20, 1996, while acting under the supervision of an authorized user, you caused Fairbanks Memorial Hospital to be in violation of 10 CFR 35.25(a)(2) in that you administered 6.6 millicuries of Iodine-131 to a patient without first obtaining the signature of an authorized user on a written directive, even though you knew that a signed written directive was required by Fairbanks Memorial Hospital's written quality management program. (01013)

This is a Severity Level III violation (Supplement VI).

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved is already adequately addressed in the transcript of the February 27, 1997 enforcement conference. However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not adequately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation", and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document

Control Desk, Washington, D.C. 20555, with a copy to the Regional Administrator, ATTN: Enforcement Officer, Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and a copy to the NRC Region IV Walnut Creek Field Office, 1450 Maria Lane, Walnut Creek, California 94596, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Dated at Arlington, Texas
this 1st day of April 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 18, 1997

IA 97-014

Mr. Michael S. Krizmanich
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-20644/93-002 and
Investigation Report No. 1-93-069R)

Dear Mr. Krizmanich:

This refers to the inspection conducted on December 2-3, 1993, at the Power Inspection, Inc., (PI) facility located in Wexford, Pennsylvania, as well as the findings of a subsequent investigation by the NRC Office of Investigations (OI). The inspection report and OI Synopsis were sent to you with our letter dated August 9, 1996. That letter also provided you with an opportunity to attend a predecisional enforcement conference. We have yet to receive a response from you to our letter and, therefore, the NRC is proceeding with appropriate enforcement action.

Based on the information developed during the inspection and subsequent investigation by OI, the NRC has determined that you were, in part, responsible for a violation of NRC requirements that occurred, involving PI. The violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding it are described in detail in the subject OI investigation report. The OI investigation report indicated that PI management directed the falsification of utilization logs. However, you did not object to performing the falsifications. A minimum of 38 radiography utilization logs were subsequently falsely created by PI employees, in violation of 10 CFR 30.9 and 10 CFR 34.27, to satisfy questions which were asked during an April 1993 NRC inspection. You were a radiographer for PI at the time the falsification violations occurred, and you acknowledged to the OI investigator that you were involved in creating one dozen false source utilization logs. As such, you caused the licensee to be in violation of NRC requirements and therefore you violated 10 CFR 30.10, as described in the Notice.

As an individual engaged in NRC-licensed activities, you were in a position that conferred upon you trust and confidence in your ability to ensure that activities were conducted in accordance with NRC requirements, and information required to be maintained by NRC requirements was complete and accurate in all material respects. Your deliberate creation of false records is of significant regulatory concern because it did not adhere to these standards, and resulted in the violation of 10 CFR 30.10. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level III.

Given the significance of your actions, I have decided, after consultation with the Commission, to issue to you the enclosed Notice. I also gave serious consideration as to whether an Order should be issued that would preclude you from any further involvement in NRC-licensed activities for a certain period. However, I have decided under the circumstances of this case, that this Notice of Violation is sufficient.

You should be aware that the NRC's regulations allow the issuance of orders and other civil sanctions directly to unlicensed persons who, through their deliberate misconduct, cause a licensee to be in violation of NRC requirements. Deliberate misconduct includes an intentional act or omission that the person knows constitutes a violation of a requirement, procedure or training instruction. An order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC-licensed facilities. A violation of this regulation as set forth in 10 CFR 30.10, and 50.5, "Deliberate Misconduct" (Enclosure 2), may also lead to criminal prosecution. You are on notice that any similar conduct on your part in the future could result in significant enforcement action against you.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence, as well as your reasons as to why the NRC should have confidence that you will comply with NRC requirements in the future. After reviewing your response to this Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room.

If you have any questions or comments, please contact Ms. Jenny Johansen, Branch Chief, Nuclear Materials Safety Branch 3, at (610) 337-5304.

Sincerely,



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Enclosures: 1. Notice of Violation
 2. Deliberate Misconduct Rule

cc w/encl:
P. Chambers, Power Inspection, Inc.

NOTICE OF VIOLATION

Mr. Michael S. Krizmanich

IA 97-014

During an NRC inspection conducted on December 2-3, 1993, and subsequent investigation by the NRC Office of Investigations (OI), a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 30.10(a)(1) requires, in part, any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission.

10 CFR 30.10(c) states, in part, that deliberate misconduct by a person means an intentional act or omission that the person knows: (1) would cause a licensee to be in violation of any rule, regulation, condition or limitation, of any license issued by the Commission, or (2) constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, contractor, or subcontractor.

10 CFR 30.9(a) states, in part, that information required by the Commission's regulations to be maintained by the licensee shall be complete and accurate in all material respects.

10 CFR 34.27 requires, in part, that each licensee shall maintain current utilization logs, which shall be kept available for three years from the date of the recorded event, for inspection by the Commission, at the address specified in the license, showing for each sealed source: the make and model number of the radiographic exposure device or storage container in which the sealed source is located; the identity of the radiographer to whom assigned; and the plant or site where used and the dates of use.

Contrary to the above, as of April 7, 1993, you caused Power Inspection, Inc. to be in violation of 10 CFR 30.9 and 10 CFR 34.27 in that you deliberately created false utilization logs. Specifically, the licensee's utilization logs maintained at the licensee's Wexford, Pennsylvania, office were inaccurate because they were neither "current" nor created on the date of use of the source, but in fact, were created at a later time in order to address questions asked by the NRC during a previous NRC inspection. This information was material because it had the capability to influence NRC action and, in fact, was presented to the NRC as indication that PI had completed the logs on the date of use. (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the

Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, or proprietary, information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at Rockville, Maryland
this 17-day of February 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406-1415

March 7, 1997

IA 97-017

Lee Myers, Ph.D.
HOME ADDRESS DELETED
UNDER 2.790

SUBJECT: Notice of Violation

Dear Dr. Myers:

On December 31, 1996, the NRC issued you a Demand for Information (DFI) because of our concern that you appeared to have engaged in deliberate misconduct while performing certain duties in your position as the Senior Medical Physicist at Temple University. Specifically, you allowed patient treatments with the High Dose Rate Afterloader (HDR) to continue on certain occasions in 1995 and 1996 even though you knew the HDR had not received its required monthly quality assurance (QA) checks. Performing treatments without having performed the required monthly calibration was a violation of the license issued to Temple University. That violation was discussed at an enforcement conference with Temple University on December 6, 1996, and was, in part, the basis for a \$10,000 civil penalty issued to Temple on December 31, 1996. Temple University responded to the civil penalty on December 31, 1996, admitted all of the violations, and paid the civil penalty.

As noted in the DFI issued to you, since you, as the Senior Medical Physicist, were responsible for conducting these tests, you were asked during the enforcement conference if you knew the tests were due and you confirmed that you did. You also were asked if you knew that these were required tests and you confirmed that you did. You were then asked why the tests did not get done prior to treating the patients, and you indicated that the reason was "scheduling problems" and you did not want to interfere with the patient treatments.

In your January 27, 1997 response to the DFI, you indicated that you believed that the monthly spot checks of the HDR were a good practice, but did not recall being told that they were license conditions until late 1996, and while provided a copy of the license, you indicated that you had not been provided any of the letters ("tie down documents") which required the checks, and did not recall this matter being covered in training sessions. You further stated that you did not realize that the monthly checks of the HDR were a condition of the license, and you postponed the monthly QA based on your belief that the monthly QA was part of Temple's QA program but not a condition of Temple's license.

Notwithstanding your contention, the NRC maintains that a violation of an NRC requirement occurred and that you were deliberately responsible for the violation since you were aware, at a minimum, of Temple University's policy that the monthly checks be performed, as you acknowledged in your response to the DFI, yet you knowingly failed to perform the monthly checks, as you acknowledged at the enforcement conference. For purposes of 10 CFR 30.10, knowledge of a specific NRC requirement is not necessary for a finding of deliberate misconduct. It is enough that a person knows that he or she is violating a policy of the licensee. See 10 CFR 30.10(c)(2). The violation is cited in the enclosed Notice of Violation (Notice).

As an individual engaged in NRC licensed activities, and in particular, a first line supervisor, you were in a position that conferred upon you trust and confidence in your ability to ensure that activities were conducted in accordance with NRC requirements and licensee expectations. Your deliberate violation of this requirement did not adhere to these standards. As such, this violation constitutes a significant regulatory concern and has been categorized at Severity Level III in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600.

Given the significance of your actions, I have decided, after consultation with the Director, Office of Enforcement, to issue to you the enclosed Notice of Violation. I also gave serious consideration as to whether an Order should be issued that would preclude you from any further involvement in NRC licensed activities for a certain period. However, I have decided, after consultation with the Director, Office of Enforcement, that this Notice of Violation is sufficient since you were not in a position above a first line supervisor; this appears to have been an isolated event limited to the HDR checks; you appeared forthright during the enforcement conference regarding your failure to due the checks; you indicated that disciplinary action has been taken against you by the university; and you described, in your response to the DFI, certain corrective actions to prevent recurrence. Those corrective actions included, but were not limited to, reading and understanding all of license requirements; reviewing procedures for improvement; adjusting clinical schedules to dedicate time for performance of the monthly calibration; and meeting with the Chairman of the Radiation Oncology Department, the RSO, and the Chief Radiation Therapist monthly to review the monthly QA results. However, any similar actions in the future may result in more significant action against you.

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence, and the date when full compliance was achieved, is already adequately addressed on the docket in your January 27, 1996 response to the DFI. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

Lee Myers, Ph.D.

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, the December 31, 1996 DFI, your January 27, 1997 response to the DFI, and any response to this letter and Notice of Violation, will be placed in the NRC Public Document Room (PDR).

Sincerely,


Hubert J. Miller
Regional Administrator

Enclosure:
As Stated

cc w/o encl:
Leon Malmud, M.D., Vice President, Health Sciences Center, Temple University
Commonwealth of Pennsylvania

ENCLOSURE

NOTICE OF VIOLATION

Dr. Lee Myers
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

IA 97-017

During an NRC inspection at Temple University completed on October 25, 1996, and review of your January 27, 1997 response to a Demand for Information, as well as based on information obtained during an enforcement conference conducted with Temple University on December 6, 1996, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 30.10(a)(1) requires, in part, that any employee of a licensee not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission.

10 CFR 30.10(c)(2) specifies, in part, that deliberate misconduct by a person means any intentional act or omission that the person knows constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee.

10 CFR 35.21(a) requires that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures.

Temple University's procedures for approving users of licensed materials and for performing spot checks of the high dose rate remote afterloader calibration are described in its letters dated March 20, 1993 and March 8, 1994, and were approved by License Condition No. 32 of License Nos. 37-00697-31 and 37-00697-02.

Temple University's letter, dated March 8, 1994, states in Item No. VIII.C.5, that the calibration of the high dose rate remote afterloader will be performed following installation of a new source, before treatment is resumed, and monthly thereafter.

Contrary to the above, for four months during 1995 and 1996, you caused Temple University to be in violation of 10 CFR 35.21(a) in that you allowed patient treatments to occur during those months with the high dose rate remote afterloader even though you knew that the monthly calibrations were not performed between April 25 and July 1, 1995; between September 9 and November 6, 1995; and between March 15 and May 10, 1996, and even though you knew, at a minimum, that it was a policy of Temple University that the monthly calibrations be performed. (01013)

This is a Severity Level III violation (Supplement VII).

Enclosure

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The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance was achieved is already adequately addressed in your January 27, 1996 response to the Demand for Information (DFI). However, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 if the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to respond, clearly mark your response as a "Reply to a Notice of Violation," and send it to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555 with a copy to the Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice).

Dated at King of Prussia, Pennsylvania
this 7th day of March 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION III
801 WARRENVILLE ROAD
LISLE, ILLINOIS 60532-4351

June 18, 1997

IA 97-037

Mr. John R. Raskovsky
919 Ridge Road
Ambridge, PA 15003

SUBJECT: NOTICE OF VIOLATION
(NRC OFFICE OF INVESTIGATIONS REPORTS 3-94-051R & 3-94-051S)

Dear Mr. Raskovsky:

This refers to the NRC Office of Investigations (OI) Reports of Investigation 3-94-051R and 3-94-051S conducted between August 11, 1994, and October 11, 1996. The investigations concerned the circumstances surrounding your failure to provide accurate information on access authorization forms used by several NRC licensees to assist in their authorization decisions. A copy of the synopsis of each investigation is enclosed.

Based on the investigations, the NRC has determined that a violation of NRC requirements occurred when you deliberately falsified access authorization documents in order to obtain unescorted access to numerous NRC-regulated nuclear power plants. The violation is cited in the enclosed Notice of Violation (Notice). Copies of the applicable NRC regulations are also enclosed.

The NRC determined that in February 1990, while you were employed by Turkey Point, a Florida Power and Light Company facility, you tested positive for cocaine metabolite during a fitness-for-duty test conducted on February 19, 1990. You were verbally advised of the test results on February 26, 1990, which you acknowledged in writing. This resulted in your unescorted access being revoked at this facility. Your appeal test report also shows that you tested positive for cocaine metabolite.

Subsequent to your unescorted access authorization revocation in 1990, the NRC determined that you deliberately falsified, by omission, the material facts regarding your fitness-for-duty and employment history background information to obtain unescorted access to other NRC-regulated nuclear power plants, including Arkansas Nuclear One (Entergy Operations, Inc.), and Davis-Besse Nuclear Power Station (Toledo Edison Company). Specifically, you were granted access through deliberately failing to disclose on the appropriate licensee forms the fact that you were employed by Turkey Point during February of 1990, and that during this employment period you tested positive for drug usage resulting in the revocation of your unescorted access. While we recognize that, during your OI interview, you stated that the reason you did not provide information in your access authorization forms related to the revocation of your access at Turkey Point was that you filed an appeal to the positive

result of the Turkey Point test. You also stated that you had neither been informed of the result of the appeal test nor been billed as you should have been if the appeal test result was positive. We have evaluated your statements and do not find your rationale for omitting information on subsequent access authorization documents persuasive.

OI determined in its subsequent investigation (3-94-051S) that the policy of requiring individuals to pay for their own appeal test, if the result was positive, was not being followed by the licensee because the policy was found to be unworkable and that you were not informed of this policy change or appeal test result because the licensee did not have your address or telephone number. In addition, you received no verbal or written confirmation that the licensee's revocation of your unescorted access had been reversed because of a negative appeal test result. Moreover, you made no attempt to contact Florida Power & Light Company to verify the status or result of your appeal test when you were required to submit access information on subsequent documents. Notwithstanding your knowledge, or lack of knowledge, of the appeal test result at Turkey Point, you were in fact denied access at this plant in 1990 for testing positive for drug usage and you should have reported this access denial on all subsequent background authorization documents.

Nuclear power plant licensees are required, in accordance with the NRC's Fitness-For-Duty requirements (10 CFR 26.27), to obtain background information from individuals to determine whether an individual was denied unescorted access to any other nuclear power plant. In addition, licensees are required to identify past actions that are indicative of an individual's future reliability within a protected or vital area (10 CFR 73.56). In failing to accurately and completely describe your background information, you did not provide the licensees with material information necessary to determine whether you should be granted unescorted access to the nuclear power plant. Deliberately providing information to a licensee or contractor that an individual knows is incomplete and inaccurate, in some respect material to the NRC, is a violation of 10 CFR 50.5.

Therefore, under the circumstances of this case and after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Regulatory Effectiveness, I have decided to issue the enclosed Notice to you for violating 10 CFR 50.5 while you were engaged in licensed activities.

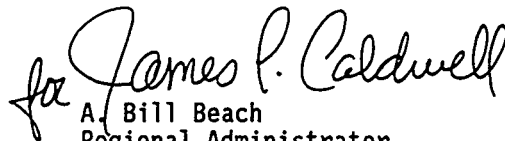
You should be aware of the seriousness with which the NRC views your actions. The public health, safety, and trust demand that nuclear power plant personnel conduct themselves with integrity at all times. You did not conduct yourself in this manner in this case. In the future, any similar violation may result in more significant enforcement actions, including your removal from NRC-licensed activities.

You are not required to respond to this letter. However, if you choose to provide a response, please provide it to me in writing and under oath within 30 days at U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter with your address removed, the Notice, and your response, if you choose to submit one, will be placed in the PDR after 45 days unless you provide sufficient basis to withdraw this letter and the Notice.

If you have any questions, please contact Mr. Brent Clayton of my staff at (630) 829-9666.

Sincerely,


A. Bill Beach
Regional Administrator

Enclosures:

1. Notice of Violation
2. Synopsis of OI Report No. 3-94-051R
3. Synopsis of OI Report No. 3-94-051S
4. Management Actions and Sanctions to
be Imposed Rule, 10 CFR 26.27
5. Deliberate Misconduct Rule, 10 CFR 50.5
6. Personnel Access Authorization Requirements
for Nuclear Power Plants Rule,
10 CFR 73.56

NOTICE OF VIOLATION

Mr. John R. Raskovsky

IA 97-037

During an NRC investigation conducted by the NRC Office of Investigations (OI Report Nos. 3-94-051R & 3-94-051S) between August 11, 1994, and October 11, 1996, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is set forth below:

10 CFR 50.5(a)(2), "Deliberate misconduct" states, in part, that no employee of a contractor may deliberately submit to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

10 CFR 26.27(a), "Management actions and sanctions to be imposed," requires, in part, that the licensee obtain a written statement from the individual as to whether activities within the scope of Part 26 were ever denied the individual before the initial granting of unescorted access to a nuclear power plant protected area. It further requires, in part, that the licensee shall complete a suitable inquiry on a best-efforts basis to determine if that person was, in the past, (i) tested positive for drugs that resulted in on-duty impairment, (ii) removed from activities within the scope of Part 26, or (iii) denied unescorted access at any other nuclear power plant. If such a record is established, granting unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program.

10 CFR 73.56(b), "Personnel access authorization requirements for nuclear power plants," requires, in part, that the licensee shall establish and maintain an access authorization program granting individuals unescorted access to protected and vital areas with the objective of providing high assurance that individuals granted unescorted access are trustworthy and reliable. The unescorted access program must include a background investigation designed to identify past actions which are indicative of an individual's future reliability within a protected or vital area of a nuclear power reactor. The licensee shall base its decision to grant, deny, revoke, or continue an unescorted access authorization on review and evaluation of all pertinent information developed.

Contrary to 10 CFR 50.5(a)(2), Mr. John R. Raskovsky, a Babcock and Wilcox Nuclear Technologies contract employee at NRC licensees listed below, deliberately provided incomplete and inaccurate information to several licensees pertaining to previous fitness-for-duty test results and employment history. Specifically, Mr. John R. Raskovsky did not specify that he had been employed at Turkey Point Nuclear Power Station in February of 1990 on an August 2, 1993, Background Investigation

Questionnaire filed to obtain unescorted access authorization for Arkansas Nuclear One Power Plant. In addition, Mr. John R. Raskovsky did not state in any of the documents listed below that he had tested positive for cocaine metabolite during a drug test conducted on February 19, 1990, and was subsequently denied access at Turkey Point:

1. A February 15, 1993 Phillips Reliance Suitable Inquiry Questionnaire to obtain unescorted access authorization to the Davis-Besse Nuclear Power Station;
2. A March 1, 1993 Davis-Besse Fitness-For-Duty Questionnaire to obtain unescorted access authorization to the Davis-Besse Nuclear Power Station;
3. An August 25, 1993 BWNT Background Investigation Questionnaire to obtain unescorted access authorization to Arkansas Nuclear One Power Plant;
4. A September 2, 1993 Security Clearance Information Questionnaire to obtain unescorted access authorization to Arkansas Nuclear One Power Plant; and
5. A September 30, 1993, Arizona Public Service Company Suitable Inquiry.

The information that Mr. John R. Raskovsky provided regarding his background information was material because, as indicated above, licensees are required to consider such information to ensure the regulatory requirements of 10 CFR 26.27 for the fitness for duty program and 10 CFR 73.56 for the access authorization program are satisfied.

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Mr. John R. Raskovsky may submit a written statement or explanation to the U. S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C., 20555, with a copy to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois, 60532, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). The reply should be clearly marked as a "Reply to Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response.

Notice of Violation

-3-

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Your response will be placed in the NRC Public Document Room (PDR) unless you provide sufficient basis to withdraw this Notice. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at Lisle, Illinois
this 18~~th~~ day of June 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199

January 31, 1997

IA 97-007

Mr. James P. Ryan
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.790]

Dear Mr. Ryan:

SUBJECT: NOTICE OF VIOLATION

The Nuclear Regulatory Commission received telephone notification from Southern Nuclear Operating Company (SNC) on January 3, 1997 which was followed up with formal correspondence dated January 24, 1997, informing us of your confirmed positive test for marijuana (Enclosure 1). We plan to place this letter in your 10 CFR Part 55 docket file.

This confirmed positive test identified a violation of 10 CFR 55.53(j). The purpose of the Commission's Fitness-for-Duty requirements is to provide reasonable assurance that nuclear power plant personnel work in an environment that is free of drugs and alcohol and the effects of the use of these substances. The use of illegal drugs is a serious matter which undermines the special trust and confidence placed in you as a licensed operator. The violation is categorized as a Severity Level III violation in accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, because the use of illegal drugs by licensed operators is a significant regulatory concern. This violation is described in the enclosed Notice of Violation (Enclosure 2). Please note that, in accordance with 10 CFR 26.27(b), future similar violations will substantially affect your authorization for unescorted access to the protected area of a licensed facility.

The purpose of this letter is to make clear to you the consequences of your violation of NRC requirements governing fitness-for-duty as a licensed operator. You are required to respond to this letter and should follow the instructions specified in the enclosed Notice of Violation (Notice) when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence in order to ensure your ability and willingness to carry out the special trust and confidence placed in you as a licensed operator of a nuclear power facility. After reviewing your response to this Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

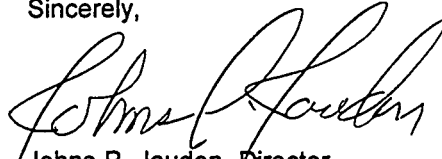
In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, enforcement actions are placed in the NRC Public Document Room (PDR). A copy of this letter (without Enclosure 1) and the enclosed Notice of Violation with your address removed will be placed in the PDR after 45 days unless you provide a sufficient basis to withdraw this violation.

J. Ryan

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If you have any questions concerning this action, please contact Mr. Thomas A. Peebles of my staff. Mr. Peebles can be reached at either the address listed above or telephone number (404) 331-5541.

Sincerely,



Johns P. Jaudon, Director
Division of Reactor Safety

Docket No. 55-20393
License No. SOP-20194-3

Enclosures: 1. January 24, 1997 Letter
from Facility Licensee
2. Notice of Violation

cc w/encl 2 w/HOME ADDRESS DELETED:
Southern Nuclear Operating Company, Inc.
ATTN: Mr. D. N. Morey
Vice President
P. O. Box 1295
Birmingham, AL 35201

cc w/encl 1 and 2 w/HOME ADDRESS DELETED:
Part 55 Docket File

NOTICE OF VIOLATION

Mr. James P. Ryan
[HOME ADDRESS DELETED]
UNDER 10 CFR 2.790(a)]

Docket No. 55-20393
License No. SOP-20194-3
IA 97-007

As a result of a notification from Southern Nuclear Operating Company (SNC) on January 3, 1997 which was followed up with formal correspondence dated January 24, 1997, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 55.53(j) prohibits the use of marijuana and prohibits the licensee from performing activities authorized by a license issued under 10 CFR Part 55 while under the influence of marijuana. "Under the influence" is defined in 10 CFR 55.53(j) to mean that the "licensee exceeded, as evidenced by a confirmed positive test, the lower of the cutoff levels for drugs or alcohol contained in 10 CFR Part 26, Appendix A, of this chapter, or as established by the facility licensee."

Contrary to the above, the licensee violated 10 CFR 55.53(j) as evidenced by the following examples:

- a. The licensee used marijuana as evidenced by a confirmed positive test for that drug resulting from a urine sample submitted on December 27, 1996.
- b. The licensee performed licensed duties authorized by a license issued under 10 CFR Part 55, on the night shift from 2300 on December 26, 1996, through 0700 on December 27, 1996, as a Unit Operator at the Joseph M. Farley Nuclear Plant immediately before submission of a urine sample, which indicated that the licensee was under the influence of marijuana. (01013)

This is a Severity Level III violation (Supplement I).

Pursuant to the provisions of 10 CFR 2.201, Mr. James P. Ryan (Licensee) is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, Region II, 101 Marietta Street, N.W., Suite 2900, Atlanta, Georgia 30323, with a copy to Mr. Thomas Peebles, Region II, 101 Marietta Street, N.W., Suite 2900, Atlanta, Georgia 30323, both marked "Open by Addressee Only" and a copy to the NRC Resident Inspector at the Joseph M. Farley Nuclear Plant, U.S. Nuclear Regulatory Commission, 7388 N State Hwy 95, Columbia, Alabama 36319, with a similar marking within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the

Enclosure 2

Notice of Violation

date when full compliance will be achieved. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time. Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Dated at Atlanta, Georgia
this 31st day of January 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 18, 1997

IA 97-015

Mr. George W. Stewart
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC Inspection Report No. 030-20644/93-002 and
Investigation Report No. 1-93-069R)

Dear Mr. Stewart:

This refers to the inspection conducted on December 2-3, 1993, at the Power Inspection, Inc., (PI) facility located in Wexford, Pennsylvania, as well as the findings of a subsequent investigation by the NRC Office of Investigations (OI). The inspection report and OI Synopsis were sent to you with our letter dated August 9, 1996. That letter also provided you with an opportunity to attend a predecisional enforcement conference. We have yet to receive a response from you to our letter and, therefore, the NRC is proceeding with appropriate enforcement action.

Based on the information developed during the inspection and subsequent investigation by OI, the NRC has determined that you were, in part, responsible for a violation of NRC requirements that occurred involving PI. The violation is cited in the enclosed Notice of Violation (Notice), and the circumstances surrounding it are described in detail in the subject OI investigation report. The OI investigation report indicated that PI management directed the falsification of utilization logs. However, you did not object to performing the falsifications. A minimum of 38 radiography utilization logs were subsequently falsely created by PI employees, in violation of 10 CFR 30.9 and 10 CFR 34.27, to satisfy questions which were asked during an April 1993 NRC inspection. You were a radiographer for PI at the time the falsification violations occurred, and you acknowledged to the OI investigator that you were involved in creating false source utilization logs. As such, you caused the licensee to be in violation of NRC requirements and therefore you violated 10 CFR 30.10, as described in the Notice.

As an individual engaged in NRC-licensed activities, you were in a position that conferred upon you trust and confidence in your ability to ensure that activities were conducted in accordance with NRC requirements, and information required to be maintained by NRC requirements was complete and accurate in all material respects. Your deliberate creation of false records is of significant regulatory concern because it did not adhere to these standards, and resulted in the violation of 10 CFR 30.10. Therefore, this violation has been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level III.

Given the significance of your actions, I have decided, after consultation with the Commission, to issue to you the enclosed Notice of Violation. I also gave serious consideration as to whether an Order should be issued that would preclude you from any further involvement in NRC-licensed activities for a certain period. However, I have decided under the circumstances of this case that this Notice of Violation is sufficient.

You should be aware that the NRC's regulations allow the issuance of orders and other civil sanctions directly to unlicensed persons who, through their deliberate misconduct, cause a licensee to be in violation of NRC requirements. Deliberate misconduct includes an intentional act or omission that the person knows constitutes a violation of a requirement, procedure or training instruction. An order may also be issued to an individual to prevent his or her engaging in licensed activities at all NRC-licensed facilities. A violation of this regulation as set forth in 10 CFR 30.10, and 50.5, "Deliberate Misconduct" (Enclosure 2), may also lead to criminal prosecution. You are on notice that any similar conduct on your part in the future could result in significant enforcement action against you.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence, as well as your reasons as to why the NRC should have confidence that you will comply with NRC requirements in the future. After reviewing your response to this Notice, including your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary to ensure compliance with NRC regulatory requirements.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure, and your response will be placed in the NRC Public Document Room (PDR).

If you have any questions or comments, please contact Ms. Jenny Johansen, Branch Chief, Nuclear Materials Safety Branch 3, at (610) 337-5304.

Sincerely,



Edward L. Jordan
Deputy Executive Director for
Regulatory Effectiveness, Program Oversight,
Investigations and Enforcement

Enclosures: 1. Notice of Violation
 2. Deliberate Misconduct Rule

P. Chambers, Power Inspection, Inc.

NOTICE OF VIOLATION

Mr. George Wesley Stewart

IA 97-015

During an NRC inspection conducted on December 2-3, 1993, and subsequent investigation by the NRC Office of Investigations (OI), a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 30.10(a)(1) requires, in part, any employee of a licensee may not engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission.

10 CFR 30.10(c) states, in part, that deliberate misconduct by a person means an intentional act or omission that the person knows: (1) would cause a licensee to be in violation of any rule, regulation, condition or limitation, of any license issued by the Commission, or (2) constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, contractor, or subcontractor.

10 CFR 30.9(a) states, in part, that information required by the Commission's regulations to be maintained by the licensee shall be complete and accurate in all material respects.

10 CFR 34.27 requires, in part, that each licensee shall maintain current utilization logs, which shall be kept available for three years from the date of the recorded event, for inspection by the Commission, at the address specified in the license, showing for each sealed source: the make and model number of the radiographic exposure device or storage container in which the sealed source is located; the identity of the radiographer to whom assigned; and the plant or site where used and the dates of use.

Contrary to the above, as of April 7, 1993, you caused Power Inspection, Inc. to be in violation of 10 CFR 30.9 and 10 CFR 34.27 in that you deliberately created false utilization logs. Specifically, the licensee's utilization logs maintained at the licensee's Wexford, Pennsylvania, office were inaccurate because they were neither "current" nor created on the date of use of the source, but in fact, were created at a later time in order to address questions asked by the NRC during a previous NRC inspection. This information was material because it had the capability to influence NRC action and, in fact, was presented to the NRC as indication that PI had completed the logs on the date of use. (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, you are hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, D.C. 20555, with a copy to the

Regional Administrator, Region I, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, or proprietary information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at Rockville, Maryland
this 14th day of February 1997



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
101 MARIETTA STREET, N.W., SUITE 2900
ATLANTA, GEORGIA 30323-0199

April 4, 1997

IA 97-018

Mr. Ronald Stewart
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

SUBJECT: NOTICE OF VIOLATION
(NRC INSPECTION REPORT NO. 50-302/96-07)

Dear Mr. Stewart:

This refers to an NRC inspection conducted during the period July 29 through August 2, 1996, at Florida Power Corporation's (FPC) Crystal River Nuclear Plant - Unit 3. The inspection included a review of an incident identified by FPC involving your apparent falsification of access authorization program documentation associated with the Crystal River Plant. The report documenting the NRC inspection contains Safeguards Information; however, an excerpt from the applicable portion of the report is provided as Enclosure 2.

Based on the information developed by the licensee's investigation and our review of that investigation, the NRC has concluded that you engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2) when you deliberately failed to provide complete information on your Personal History Questionnaire (PHQ) during the preemployment process at Crystal River. Specifically, while you were employed by Brock and Blevins (a division of Williams Power Company), you falsified the PHQ when you failed to include various instances of prior criminal convictions. Based on the incomplete information you provided on the PHQ, you were granted temporary, unescorted access to the Crystal River site from February 17 through March 12, 1996, pending completion of Federal Bureau of Investigation (FBI) fingerprint checks. Subsequently, Crystal River personnel became aware of your criminal history as a result of the five-year background investigation conducted by Williams Power Company, and the FBI fingerprint check confirmed multiple criminal convictions which you had omitted from your PHQ.

Pursuant to 10 CFR 73.56, the NRC requires each licensee to establish and maintain an access authorization program which provides a high degree of assurance that individuals granted unescorted access to protected and vital areas of nuclear power plants are trustworthy and reliable. Your omission of material information from your PHQ undermined this process. The NRC relies on complete and accurate documentation of activities and the integrity of individual workers at nuclear power facilities to assure compliance with regulatory requirements. Additionally, the NRC is concerned that you stated on your PHQ for Crystal River that you were previously employed and granted unescorted access at other nuclear sites; however, you failed to list these

CERTIFIED MAIL NO. P 058 054 421
RETURN RECEIPT REQUESTED

places of employment. This calls into question the accuracy of your representations on the PHQs you completed at other facilities. Therefore, after consultation with the Director, Office of Enforcement, and the Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations, and Enforcement, the NRC has decided to issue the enclosed Notice of Violation (Notice) to you based on your violation of the NRC's regulations regarding deliberate misconduct. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, the violation has been classified at Severity Level III.

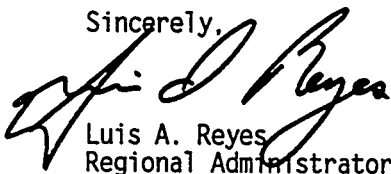
The enclosed Notice carries no additional sanctions with it, i.e., the NRC is placing no restrictions on your ability to seek employment in NRC-licensed activities in the future should you meet the applicable regulatory requirements. However, you should be aware that this letter and Notice will be a matter of public record and will be published in NUREG-0940, a compilation of significant agency enforcement actions which is made available to NRC licensees and the public. You should also be aware that any similar failures in the future could lead to additional civil or criminal actions being taken against you.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. In your response, you should document the specific actions taken and any additional actions you plan to prevent recurrence.

In accordance with Section 2.790 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations, records or documents compiled for enforcement purposes are placed in the NRC Public Document Room (PDR). A copy of this letter with your address removed and your response will be placed in the PDR 45 days after the date of this letter unless you provide sufficient basis to withdraw this letter. Upon placement of these documents in the PDR, a copy of this enforcement action will also be provided to Florida Power Corporation.

Questions concerning this letter or the Notice may be addressed to Mr. Paul Fredrickson, Chief, Special Inspection Branch at 404-331-5596.

Sincerely,



Luis A. Reyes
Regional Administrator

- Enclosures:
1. Notice of Violation
 2. Excerpt from Inspection Report
No. 50-302/96-07
 3. 10 CFR 50.5, Deliberate
Misconduct

NOTICE OF VIOLATION

Mr. Ronald Stewart
[HOME ADDRESS DELETED
UNDER 10 CFR 2.790]

IA 97-018

During an NRC inspection conducted on July 29 through August 2, 1996, a violation of NRC requirements was identified. In accordance with the "General Statement of Policy and Procedures for NRC Enforcement Actions," NUREG-1600, the violation is listed below:

10 CFR 50.5(a)(2) states, in part, that no employee of a licensee may deliberately submit to a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

Contrary to the above, on or before February 17, 1996, Mr. Ronald Stewart deliberately failed to provide complete and accurate information during the preemployment process at Florida Power Corporation's Crystal River Plant. Specifically, Mr. Stewart failed to include his history of criminal convictions on the Personal History Questionnaire, which was used as the basis for granting him unescorted access to the Crystal River site from February 17 through March 12, 1996. This information is material to the NRC in that verification of an individual's criminal history and suitability for the granting of unescorted access is an essential element of the licensee's access authorization program required by 10 CFR 73.56. (01013)

This is a Severity Level III violation (Supplement VII).

Pursuant to the provisions of 10 CFR 2.201, Mr. Ronald Stewart is hereby required to submit a written statement or explanation to the U.S. Nuclear Regulatory Commission, ATTN: Regional Administrator, NRC Region II, 101 Marietta Street, Suite 2900, Atlanta, Georgia 30323, within 30 days of the date of the letter transmitting this Notice of Violation (Notice). The reply should be clearly marked as a "Reply to Notice of Violation" and should include for each violation the following: (1) the reason for the violation, or, if contested, the basis for disputing the violation, (2) the corrective steps that have been taken and the results achieved, (3) the corrective steps that will be taken to avoid further violations, and (4) the date when full compliance will be achieved. Your response may reference or include previously docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, an order or a Demand for Information may be issued as to why such other action as may be proper should not be taken. Where good cause is shown, consideration will be given to extending the response time.

Under the authority of Section 182 of the Act, 42 U.S.C. 2232, this response shall be submitted under oath or affirmation.

Enclosure 1

Because your response will be placed in the NRC Public Document Room (PDR), to the extent possible, it should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. However, if you find it necessary to include such information, you should clearly indicate the specific information that you desire not to be placed in the PDR, and provide the legal basis to support your request for withholding the information from the public.

Dated at Atlanta, Georgia
this 4th day of April 1997

EXCERPT FROM NRC INSPECTION REPORT NO. 50-302/96-07

6.0 Access Authorization (TI 2515/127)

By letter dated May 27, 1992, the licensee submitted Revision 6 to the Crystal River Nuclear Plant PSP [Physical Security Plan] committing to the requirements of 10 CFR 73.56 and NRC Regulatory Guide 5.66, Access Authorization Program for Nuclear Power Plants.

Upon discussion with licensee representatives, the inspector noted that four Williams Power Company employees had recently been terminated due to possible falsification. The inspector determined that the following contractors had falsified their Personal History Questionnaires (PHQs):

- A contractor was granted temporary unescorted access on January 18, 1996, and was terminated on April 12, 1996. The individual's access was terminated for falsification of the PHQ in which he failed to list previous criminal convictions. In addition, while employed at Crystal River, the contractor failed to report an arrest for Driving Under the Influence (DUI). The falsification was discovered by the licensee when the fingerprints were returned to the licensee.
- A contractor was granted temporary unescorted access on February 7, 1996, and was terminated on April 12, 1996. The individual's access was terminated for falsification of the PHQ in which he failed to list previous felony convictions. The falsification was discovered by the licensee when the fingerprints were returned to the licensee.
- A contractor was granted temporary unescorted access on February 17, 1996, and was terminated on March 12, 1996. The individual's access was terminated for falsification of the PHQ in which he failed to list previous felony convictions. The falsification was discovered by the licensee when the fingerprints were returned to the licensee.
- A contractor was granted temporary unescorted access on February 13, 1996, and was terminated on April 10, 1996. The individual's access was terminated for falsification of the PHQ in which he failed to list previous criminal convictions. Prior to the return of the fingerprints, the individual was arrested offsite on outstanding warrant charges. The return of the fingerprints noted this outstanding warrant also.

The inspector noted that the PHQ given to the individuals to complete clearly requested that the applicant provide information concerning any arrest, conviction, indictment, charge or fined offense within their lifetime.

The falsification of Access Authorization records discussed above is being considered further by the NRC. This will be tracked as Unresolved Item (URI) 96-07-03.

Enclosure 2

BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

1. REPORT NUMBER
(Assigned by NRC. Add Vol., Supp., Rev.,
and Addendum Numbers, if any.)

NUREG-0940, PART I
VOL. 16, No. 1

2. TITLE AND SUBTITLE

Enforcement Actions: Significant Actions Resolved
Individual Actions
Semiannual Progress Report
January - June 1997

3. DATE REPORT PUBLISHED

MONTH YEAR

September 1997

4. FIN OR GRANT NUMBER

5. AUTHOR(S)

Office of Enforcement

6. TYPE OF REPORT

Technical

7. PERIOD COVERED (Inclusive Dates)

8. PERFORMING ORGANIZATION - NAME AND ADDRESS (If NRC, provide Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address, if contractor, provide name and mailing address.)

Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

9. SPONSORING ORGANIZATION - NAME AND ADDRESS (If NRC, type "Same as above"; if contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.)

Same as above

10. SUPPLEMENTARY NOTES

11. ABSTRACT (200 words or less)

This compilation summarizes significant enforcement actions that have been resolved during the period (January - June 1997) and includes copies of Orders and Notices of Violation sent by the Nuclear Regulatory Commission to individuals with respect to these enforcement actions. It is anticipated that the information in this publication will be widely disseminated to managers and employees engaged in activities licensed by the NRC. The Commission believes this information may be useful to licensees in making employment decisions.

12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.)

Wrongdoers

13. AVAILABILITY STATEMENT

Unlimited

14. SECURITY CLASSIFICATION

(This Page)

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